

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 46

UNITED STATES, APPELLANT,

vs.

GENERAL MOTORS CORPORATION ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

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No. 143—Letter to Gene Staley from E. H. Colliau, Colliau Chevrolet, dated March 17, 1961	1375	796
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No. 197—Letter to Glenn S. Roberts, Los Angeles, from Robert Sorensen, Community Chevrolet, dated March 6, 1961.....	1449	864
No. 198—Letter to Owen Keown, President, Owen Keown Chevrolet, from K. E. Staley, dated December 16, 1960.....	1450	865
No. 200—Letter to All Chevrolet Dealers from K. E. Staley, General Sales Manager, Chevrolet Motors Division, dated August 1, 1960, with attached letter of instructions addressed to All Chevrolet Wholesale Personnel from K. E. Staley, dated July 29, 1960.....	1455	870

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Southern District of California, Central Division—
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Plaintiff's Exhibits—Continued

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No. 201—Inter-Organization letter to H. E. Crawford from L. N. Mays, Assistant General Sales Manager for the West, Chevrolet Motor Division, re Discount House Activity Pacific Coast Region, dated January 18, 1961	1458	873
No. 212—Looseleaf booklet entitled, "Prepared by Statistical Tabulating Corporation"—contains "print out" listing all 1960 sales of Chevrolets by seven dealers who sold through discount houses and referral services	1460	876

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No. 287—Chart showing 1960 Chevrolet Dealer Volume in Los Angeles metropolitan area ...	1810	1229
No. 290—Letter to Robert O'Connor from Phil Johnston, College Chevrolet, Inc., dated March 21, 1961	1812	1231

DEFENDANTS' EXHIBITS:

A—Map of Chevrolet-Los Angeles Metropolitan Area (expanded) showing Chevrolet dealer and discount house locations (Stipulation of Facts Number Three) (See Clerk's note.)	1813	1232
B—Map of Chevrolet-Los Angeles Metropolitan Area (expanded) showing Chevrolet dealer, Ford (Ford, Mercury, Comet) dealer, Chrysler (Plymouth, Dodge) dealer, Rambler dealer, Studebaker dealer, and Volkswagen dealer locations (Stipulation of Facts Number Three) (See Clerk's note.)	1813	1232
C—Listing of Chevrolet dealers and identifying numbers for Defendants' Exhibits A and B (Stipulation of Facts Number Three) (Blue Dots)	1814	1233
D—Listing of discount houses and referral services and identifying numbers for Defendants' Exhibit A (Stipulation of Facts Number Three) (Red Dots)	1821	1238
J—Tabulation from Defendants' Exhibit B by identifying number showing each Chevrolet dealer, Ford dealer, Chrysler dealer, Rambler dealer, Studebaker dealer and Volkswagen dealer located within a five mile radii of each Chevrolet dealer indexed in Defendants' Exhibit C	1824	1240

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AA—Stipulation of Facts Number Two, dated May 20, 1964, with attachments—Gemeo Auto Show—Discount house ads (excerpts)	1846	1261
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AQ—Letter to J. H. Connell from L. N. Mays, dated November 23, 1960	1880	1295
AR—Letter to K. E. Staley from Frank Green, dated December 2, 1960, with attached copy of Auto Dealers Business Letter dated December 2, 1960	1881	1296
AS—Letter to Frank Green from J. M. Roche, dated December 15, 1960	1885	1301
AV—Inter-Organization letter to All Car Divisions from J. M. Roche, dated December 28, 1960, with attached letters "To All (Cadillac, Buick, Chevrolet, Oldsmobile and Pontiac) Dealers", dated December 30, 1960	1887	1303
AW—Inter-Organization letter to J. M. Roche from K. E. Staley, dated December 29, 1960	1905	1324
AX—Letter to John S. Gordon from James Fahy and Virgil Dunn, dated February 15, 1961	1906	1325
AY—Inter-Organization letter to Lawrence Averill from A. H. Belfie, dated March 23, 1961, with attached copy of letter to James Fahy and Virgil Dunn, Fleet Sales Company, from A. H. Belfie, dated March 23, 1961	1907	1326
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BA—P-W Exhibit—Summary of Profitability in the Service and Parts Departments in 1960 for the 76 Los Angeles Metropolitan Area Chevrolet Dealers	1917	1333
BB—P-W Exhibit—Estimated Reduction in New Car Volume to Eliminate all Profit for Volume Classes of Los Angeles Metropolitan Area Chevrolet Dealers	1918	1333
BC—P-W Exhibit—Estimated Reduction in New Car Selling Price to Eliminate all Profit for Volume Classes of Los Angeles Metropolitan Area Chevrolet Dealers	1919	1334

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BE—P-W Exhibit—Reprint from Collier's—taken from HIRSCH, Introduction to Modern Statistics, p. 45	1921	1335
BF—P-W Exhibit—Graph: 1960 Combined Gross Profit for New and Used Car Departments (Based on 1960 Financial Statements of the 73 Los Angeles Metropolitan Area Chevrolet Dealers)	1922	1337
BG—P-W Exhibit—Graph: 1960 Combined Gross Profit for Service and Parts Departments (Based on 1960 Financial Statements etc.)	1923	1338
BH—P-W Exhibit—Graph: 1960 Net Miscellaneous Income of the Entire Dealership (Based on 1960 Financial Statements etc.)	1924	1339
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BJ—P-W Exhibit—Graph: 1960 Combined Semi-fixed Expenses of the New and Used Car Departments (Based on 1960 Financial Statements etc.)	1926	1341
BK—P-W Exhibit—Graph: 1960 Combined Semi-fixed Expenses of the Service and Parts Departments (Based on 1960 Financial Statements etc.)	1927	1342
BL—P-W Exhibit—Graph: 1960 Fixed Expenses of the Dealership (Based on 1960 Financial Statements etc.)	1928	1343
BM—P-W Exhibit—Effect of a Loss in Sales Volume upon a Los Angeles Metropolitan Area Chevrolet Dealer of the 300 New Car Volume Class	1929	1345
BN—P-W Exhibit—Effect of a Loss in Sales Volume upon a Los Angeles Metropolitan Area Chevrolet Dealer of the 400 New Car Volume Class	1930	1346
BO—P-W Exhibit—Effect of a Loss in Sales Volume upon a Los Angeles Metropolitan Area Chevrolet Dealer of the 500 New Car Volume Class	1931	1347

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[fol. 1]

[File endorsement omitted]

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF CALIFORNIA,
CENTRAL DIVISION.**

Civil No. 62-1208-CC

(15 U.S.C. § 1)

Sherman Antitrust Act

UNITED STATES OF AMERICA, Plaintiff,

v.

**GENERAL MOTORS CORPORATION; LOSOR CHEVROLET DEALERS
ASSOCIATION; DEALERS' SERVICE, INC.; and FOOTHILL
CHEVROLET DEALERS ASSOCIATION, Defendants.**

COMPLAINT—Filed August 30, 1962

The United States of America, acting under the direction of the Attorney General of the United States, brings this action against the defendants named herein and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U.S.C. § 4), as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Section 1 of said Act (15 U.S.C. § 1).

[fol. 2] 2. Each of the defendants maintains an office, transacts business and is found within the Southern District of California, Central Division.

II

Definitions

3. As used herein:

(a) "Chevrolet automobiles" means all of the various series and models of new passenger cars, station wagons, and trucks sold by the Chevrolet Motor Division of General Motors Corporation under trade names including "Chevrolet," "Corvair," and "Corvette";

(b) "Chevrolet Dealer" means any person, firm, or corporation engaged in purchasing Chevrolet automobiles from General Motors Corporation for resale to the public pursuant to a Dealer Selling Agreement with the Chevrolet Motor Division of General Motors Corporation;

(c) "Southern California area" means the counties of Los Angeles, Orange, Riverside, San Bernardino, Ventura, San Diego, Imperial, San Luis Obispo, and Santa Barbara, State of California.

III

Defendants

4. General Motors Corporation (hereinafter General Motors) is hereby made a defendant herein. General Motors is a corporation organized and existing under the laws of the State of Delaware, with principal offices in New York, New York and Detroit, Michigan. General Motors is the largest automobile manufacturer in the United States.

5. Losor Chevrolet Dealers Association (hereinafter Losor), a California corporation, is hereby made a defendant herein. Losor is a trade association whose membership consists of Chevrolet dealers in Orange County and in the southern and western portions of Los Angeles County, State of California.

6. Dealers' Service, Inc. (hereinafter DSI), a California corporation, is hereby made a defendant herein. DSI is a [fol. 3] trade association whose membership consists of Chevrolet dealers in the city of Los Angeles and adjacent

communities in Los Angeles County, State of California.

7. Foothill Chevrolet Dealers Association (hereinafter Foothill), a California corporation, is hereby made a defendant herein. Foothill is a trade association whose membership consists of Chevrolet dealers in the northern and eastern portions of Los Angeles County, and in Riverside and San Bernardino Counties, State of California.

8. Whenever in this Complaint reference is made to any act, deed, or transaction of any corporate defendant, such allegations shall be deemed to mean that the officers, directors, agents, employees, or representatives of said corporate defendant, while engaged in the management, direction, or control of its affairs, authorized, ordered, or did such act, deed, or transaction for and on behalf of said corporate defendant.

IV

Co-Conspirators

9. The officers, directors, and members of Losor, DSI, and Foothill, certain officers and employees of such members, certain officers and employees of General Motors, other Chevrolet dealers in the Southern California area, and others to the plaintiff unknown, have participated as co-conspirators in the combination and conspiracy alleged herein and have done acts and made statements in furtherance thereof.

V

Nature of Trade and Commerce

10. Component parts of Chevrolet automobiles are produced by or for the Chevrolet Motor Division of General Motors in plants located in various States of the United States. These parts are shipped to various assembly plants throughout the United States, including an assembly plant in the Southern California area, at Van Nuys, California, and an assembly plant at Oakland, California. While most [fol. 4] of the Chevrolet automobiles shipped to Chevrolet dealers in the Southern California area are assembled in the aforesaid plants in California, a substantial number of Chevrolet automobiles are shipped to such dealers from assembly plants located outside of California. All such shipments of Chevrolet automobiles are made pursuant to

orders placed by such dealers (a) after they have received and accepted orders from customers or (b) in anticipation of orders to be received and sales to be made.

11. Thus, Chevrolet automobiles assembled at plants located outside of California move in interstate commerce from such plants through Chevrolet dealers in the Southern California area to their purchasers, and component parts and accessories produced in plants outside of California move in interstate commerce from such plants through the assembly plants at Van Nuys and Oakland to Chevrolet dealers in the Southern California area and thence to their purchasers.

12. During the calendar year 1960, Chevrolet dealers in the Southern California area sold Chevrolet automobiles having a retail value of about \$250,000,000.

13. For many years Chevrolet dealers in the Southern California area customarily performed all of the functions incident to the retail merchandising of Chevrolet automobiles. However, beginning in or about 1953 and continuing to early 1961, certain Chevrolet dealers in the Southern California area, including members of Losor, DSI, and Foothill, entered into agreements or understandings with certain persons, firms, and corporations, some commonly known as discount houses and others as referral services, pursuant to which such discount houses and referral services, acting as independent businessmen, performed many of the merchandising functions theretofore performed by such Chevrolet dealers.

14. In accordance with such agreements or understandings said discount houses and referral services performed one or more of the following merchandising functions:

[fol. 5] (a) referred potential customers to Chevrolet dealers who had agreed in advance to quote such customers prices based on specified markups over the invoice costs of such dealers;

(b) negotiated with prospective purchasers the terms and conditions of sale of Chevrolet automobiles;

(c) appraised the trade-in value of and in some instances purchased the used automobiles of purchasers of Chevrolet automobiles;

(d) prepared purchase orders for and made deliveries of Chevrolet automobiles to purchasers;

(e) secured financing for purchasers of Chevrolet automobiles, in many instances at interest rates below those offered by Chevrolet dealers in the Southern California area.

15. During the aforesaid period, about 1953 to early 1961, the number of discount houses and referral services in the Southern California area increased rapidly. Correspondingly, the number of Chevrolet automobiles sold by Chevrolet dealers in said area pursuant to agreements or understandings with discount houses and referral services increased substantially. While in 1953 only a few hundred Chevrolet automobiles were sold in the Southern California area pursuant to agreements or understandings between Chevrolet dealers and discount houses and referral services, in 1960 the number had increased to over 2,000, having a retail value of approximately \$5,000,000. This increase in sales of Chevrolet automobiles threatened to lower retail prices of Chevrolet automobiles in the Southern California area.

VI

The Combination and Conspiracy

16. Beginning in or about the summer of 1960, and continuing to the date of the filing of this Complaint, the defendants and co-conspirators have engaged in an unlawful combination and conspiracy to suppress and eliminate [fol. 6] competition in the sale and distribution of Chevrolet automobiles in the Southern California area, in unreasonable restraint of the hereinbefore described trade and commerce in Chevrolet automobiles in violation of Section 1 of the Act of Congress of July 2, 1890 (15 U.S.C. § 1, commonly known as the Sherman Act).

17. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which have been:

(a) To suppress and restrain sales of Chevrolet automobiles by Chevrolet dealers pursuant to agreements or understandings with discount houses and referral services;

(b) To induce and persuade Chevrolet dealers to

refrain from selling Chevrolet automobiles pursuant to agreements or understandings with discount houses and referral services;

(c) To utilize "shoppers" for the purpose of identifying Chevrolet dealers selling Chevrolet automobiles pursuant to agreements or understandings with discount houses or referral services;

(d) To induce and persuade Chevrolet dealers to repurchase Chevrolet automobiles purchased by "shoppers" from such dealers.

18. During the period of time covered by this Complaint and for the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which, as hereinbefore alleged, they combined and conspired to do.

VII

Effects of the Combination and Conspiracy

19. The aforesaid combination and conspiracy has had, among other things, the following effects:

(a) The right of Chevrolet dealers in the Southern [fol. 7] California area to sell Chevrolet automobiles pursuant to agreements or understandings with discount houses and referral services has been restricted and eliminated;

(b) Competition in the sale and distribution of Chevrolet automobiles among Chevrolet dealers in the Southern California area has been suppressed;

(c) Purchasers of Chevrolet automobiles in the Southern California area have been deprived of the benefit of purchasing Chevrolet automobiles in a free and unrestricted competitive market;

(d) The right of discount houses and referral services to participate in the sale and distribution of Chevrolet automobiles in the Southern California area has been restricted and eliminated.

VIII

Prayer

Wherefore, plaintiff prays:

1. That the Court adjudge and decree that the defendants, and each of them, have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce in Chevrolet automobiles, as hereinbefore alleged, in violation of Section 1 of the Sherman Act.
2. That each of the defendants, its successors, assignees and transferees, and the respective officers, directors, agents, and employees thereof, and all persons acting or claiming to act on behalf thereof, be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, the combination and conspiracy hereinbefore alleged, or from engaging in any other combination or conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program, or device having a similar purpose or effect.
3. That General Motors, its successors, assignees, and transferees, and its officers, directors, agents and employees, and all persons acting on its behalf, be perpetually enjoined from imposing or attempting to impose any limitation or restriction on the persons or classes of persons, including but not limited to discount houses and referral services, with whom any dealer of General Motors automobiles or trucks may deal.
4. That General Motors, its successors, assignees, and transferees and its officers, director, agents and employees and all persons acting on its behalf be perpetually enjoined from inducing or persuading or attempting to induce or persuade any dealer of General Motors automobiles or trucks to refrain from dealing with discount houses or referral services, or with any other person or class of persons.
5. That General Motors, its successors, assignees, and transferees, and its officers, directors, agents and employees, and all persons acting on its behalf, be perpetually enjoined from controlling or attempting to control the

prices at which any dealer of General Motors automobiles or trucks may resell such automobiles or trucks.

6. That General Motors, its successors, assignees, and transferees, and its officers, directors, agents and employees, and all persons acting on its behalf, be perpetually enjoined from exercising or attempting to exercise any restraint on the resale of General Motors automobiles or trucks by any dealer.

7. That the plaintiff have such other, further, and different relief as to the Court may seem just and proper in the premises.

8. That the plaintiff recover the costs of this suit.

Dated: August 30, 1962.

/s/ Maxwell M. Blecher, Attorney, Department of Justice.

/s/ Robert F. Kennedy, Attorney General. /s/ Lee Loevinger, Assistant Attorney General. /s/ Paul A. Owens, /s/ Charles L. Whittinghill, Attorneys, Department of Justice. /s/ Francis C. Whelan, United States Attorney.

[fol. 9]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF CALIFORNIA, CENTRAL DIVISION

[Title omitted]

Civil No. 62-1208-CC

ANSWER OF DEFENDANT GENERAL MOTORS CORPORATION—
Filed April 30, 1963

Defendant General Motors Corporation for answer to
plaintiff's complaint admits, denies and alleges:

First Defense

1. Denies each and every allegation of paragraph 1 of the complaint except admits that plaintiff invokes the [fol. 10] jurisdiction of this court on the basis of the statutory provisions referred to therein.
2. Admits the allegations of paragraph 2 of plaintiff's complaint.
3. Denies each and every allegation of paragraph 3 of plaintiff's complaint except admits that plaintiff has used the terms "Chevrolet automobiles," "Chevrolet Dealer" and "Southern California area," as defined in said paragraph.
4. Admits the allegations of paragraph 4 of plaintiff's complaint.
5. Admits the allegations of paragraphs 5, 6 and 7 of plaintiff's complaint except alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations that Losor Chevrolet Dealers Association, Dealers' Service, Inc. and Foothill Chevrolet Dealers Association are "trade associations."
6. Denies each and every allegation of paragraph 8 of plaintiff's complaint except admits that in plaintiff's complaint references are made to acts, deeds or transactions of corporate defendants in the manner described in said paragraph.
7. Denies each and every allegation of paragraph 9 of plaintiff's complaint.

8. Answering paragraph 10 of plaintiff's complaint [fol. 11] admits and alleges as follows: Component parts of Chevrolet automobiles are produced by or for the Chevrolet Motor Division of General Motors Corporation in plants located in various states of the United States, including California. These parts are shipped to various assembly plants operated at various locations in the United States including Van Nuys and Oakland, California. While most of the Chevrolet automobiles shipped to Chevrolet dealers in the Southern California area, as defined in plaintiff's complaint, are assembled at said Van Nuys and Oakland California assembly plants, some Chevrolet automobiles are shipped to such dealers from assembly plants located outside of California. Substantially all shipments of Chevrolet automobiles are made pursuant to orders placed by such dealers (a) after they have received and accepted orders from customers or (b) in anticipation of orders to be received and sales to be made.

Except as so expressly admitted and alleged, denies each and every allegation of paragraph 10 of plaintiff's complaint.

9. Denies each and every allegation of paragraph 11 of plaintiff's complaint.

10. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of plaintiff's complaint.

11. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations [fol. 12] of paragraph 13 of plaintiff's complaint except admits that for many years Chevrolet dealers in the Southern California area, as defined in plaintiff's complaint, customarily performed all of the functions incident to the retail merchandising of Chevrolet automobiles and that in 1960 and continuing to early 1961 some Chevrolet dealers located in said area entered into agreements or understandings with discount houses and referral services pursuant to which such discount houses and referral services performed some merchandising functions in the sale of some of the Chevrolets owned by such dealers.

12. Answering the allegations of paragraph 14 of plaintiff's complaint admits that in accordance with the agreements or understandings admitted in paragraph 11 hereof some discount houses and referral services performed in

the sale of some of the Chevrolets owned by dealers who were parties to such agreements or understandings, one or more of the merchandising functions described in subparagraphs (a), (b), (c) and (d) of paragraph 14 of plaintiff's complaint. Alleges that in some instances said agreements or understandings made or had by discount houses or referral services with one or more Chevrolet dealers (as well as similar agreements or understandings made or had by said discount houses with dealers in other makes of new automobiles) fixed or controlled the price at which said dealer or dealers could sell his or their new automobiles to customers procured by said discount houses or referral services and thereby said agreements or understandings restricted the individual dealer's freedom to price his new automobiles sold pursuant to said agreements or understandings; that in such instances said [fol. 13] agreements or understandings restricted price competition among competing dealers. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of subparagraph (e) of paragraph 14 of plaintiff's complaint. Except as admitted or alleged in this paragraph, denies each and every allegation of paragraph 14 of plaintiff's complaint.

13. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of plaintiff's complaint.

14. Denies each and every allegation of paragraph 16 of plaintiff's complaint.

15. Denies each and every allegation of paragraph 17 of plaintiff's complaint.

16. Denies each and every allegation of paragraph 18 of plaintiff's complaint.

17. Denies each and every allegation of paragraph 19 of plaintiff's complaint.

Second Defense

18. During the period of the offense charged in the complaint, the Chevrolet Motor Division of General Motors Corporation caused Chevrolets to be marketed in the Southern California area, as defined in plaintiff's complaint, by dealers under a plan of marketing evidenced by and embodied in written Dealer Selling Agreements between the Chevrolet Motor Division and each of its

dealers in such area. These Dealer Selling Agreements are identical in form.

19. Each Dealer Selling Agreement assigns to the dealer an area of primary sales responsibility but leaves the dealer free to sell Chevrolets at any price to anyone wherever he may live, work, or have a place of business; each requires the dealer to establish a place of business at a location or locations approved by the Chevrolet Motor Division; and each requires the dealer to refrain from establishing another place of business or branch sales office at any other location without the approval of the Chevrolet Motor Division. In the Los Angeles Metropolitan Area each dealer's area of primary responsibility is the entire Metropolitan Area and the Metropolitan Area Addendum to the Dealer Selling Agreement, applicable to each Chevrolet dealer in the Los Angeles Metropolitan Area, provides in writing that the Chevrolet Motor Division will not increase the number of dealers or change the location of any dealer's place of business without 60 days notice to each dealer in the Metropolitan Area and an opportunity to be heard.

20. Since the Dealer Selling Agreements require the dealers to refrain from establishing additional places of business or branch sales offices without approval of the Chevrolet Motor Division, the Dealer Selling Agreements prohibit dealers from establishing, without approval of the Chevrolet Motor Division, the equivalent of additional places of business or branch sales offices and from accomplishing by indirection or subterfuge the establishment of additional places of business or branch sales offices. For a dealer to arrange with a discount or referral house operating a place of business at a location not approved by the Chevrolet Motor Division to have such discount or referral house perform merchandising functions in the sale of such dealer's Chevrolets, including engaging in the business or referring customers to such dealers, negotiating terms and conditions of sales of such dealers' Chevrolets to consumers and appraising and purchasing trade-in cars on such sales is a way whereby the dealer provided for himself what was in substance and effect an additional and unauthorized place of business or branch office without approval of the Chevrolet Motor Division.

21. Having regard to substance rather than to form, the

Dealer Selling Agreements require Chevrolet dealers to refrain from having or performing agreements or understandings with discount or referral houses having places of business at locations not approved by the Chevrolet Motor Division whereby such houses engage in the business of referring customers to such dealers with such dealers negotiating the terms of sale with the customer, or whereby such houses negotiate the terms of sale of the Chevrolet with the customer and whereby such dealers, upon instructions from such houses, register title to the Chevrolet in the name of the customer. Under either such form of transaction, and under any combination thereof, the agreement or understanding is one in which the dealer uses discount or referral houses operating places of business at locations other than the dealer's approved location, to perform merchandising services for him in the sale of his Chevrolets. Such agreements and understandings with discount or referral houses and their performance violate the Dealer Selling Agreements.

22. Each Dealer Selling Agreement also provides that it is made in reliance upon the personal qualifications and business ability of the persons who own and operate the organization designated as the "Dealer"; that the "Dealer" shall perform the operating requirements of the agreement including the sale of Chevrolets, pursuant to the selling privilege granted to the "Dealer," in a manner which will preserve the good will of Chevrolet products; and that the "Dealer" shall not, without consent of the Chevrolet Motor Division, transfer to others the "Dealer's" obligation to perform the operating requirements of the agreement including the requirement to sell the Chevrolet products in accordance with the selling privilege granted to the "dealer."

23. Since the Dealer Selling Agreements obligate the "Dealers" not to transfer to others, without consent of the Chevrolet Motor Division, the "Dealer's" obligation to perform the operating requirements of the agreements including the requirement to sell Chevrolet products in accordance with the selling privilege granted to the "dealer," the Dealer Selling Agreements prohibit dealers from arranging with a discount or referral house, without consent of the Chevrolet Motor Division, to have such discount or referral house perform merchandising functions in the sale of such

dealer's Chevrolets including engaging in the business of referring customers to such dealers, negotiating terms and [fol. 17] conditions of sales of such dealers' Chevrolets to consumers and appraising and purchasing trade-in cars on such sales.

24. The Dealer Selling Agreements require Chevrolet dealers to refrain from having or performing agreements or understandings with discount or referral houses whereby such houses engage in the business of referring customers to such dealers with such dealers negotiating the terms of sale with the customer, or whereby such houses negotiate the terms of sale of the Chevrolet with the customer and whereby such dealers, upon instructions from such houses, register title to the Chevrolet in the name of the customer. Under either such form of transaction, and under any combination thereof, the agreement or understanding is one in which the dealer transfers to discount or referral houses the dealer's obligation to perform the operating requirements of the Dealer Selling Agreement, including the requirement to sell Chevrolet products in accordance with the selling privilege granted to the "Dealer." Such agreements and understandings with discount or referral houses and their performance violate the said non-transfer provisions of the Dealer Selling Agreements.

25. The provisions of the Dealer Selling Agreements described in paragraphs 19 to 24, inclusive, of this Answer were developed and adopted as a part of a marketing plan which, recognizing the special nature of the product, was designed to and does preserve the good will of Chevrolet, provide adequate sales, automotive service and spare parts facilities, and promote competition by Chevrolet dealers [fol. 18] with dealers in other makes of automobiles and by Chevrolet dealers among each other.

26. Under the Dealer Selling Agreements a dealer has the right to sell Chevrolets at any price to anyone wherever he may work, live or have a place of business. Under such agreements, a Chevrolet dealer is not guaranteed or granted any markets, territories or customers, nor is he denied or excluded from any markets, territories or customers; there is neither territory security, territory exclusivity nor customer exclusivity. Each dealer is free to compete both with other Chevrolet dealers and with dealers in other makes of automobiles.

27. The provisions of the Dealer Selling Agreements described in paragraphs 19 to 24, inclusive, of this Answer are valid, do not constitute an unreasonable restraint of competition, and do not violate Section 1 of the Sherman Act.

28. The provisions of the Dealer Selling Agreements described in paragraphs 19 to 24, inclusive, of this Answer being valid:

(a) Defendant General Motors Corporation had the right to endeavor to preserve and protect the Chevrolet plan of marketing and to endeavor to induce and persuade Chevrolet dealers to cease conduct which was violative of the Dealer Selling Agreements and in particular to cease making and performing arrangements with discount or referral houses whereby such houses, in places of business at locations not approved by the [fol. 19] Chevrolet Motor Division, performed merchandising functions in the sale of such dealers' Chevrolets including engaging in the business of referring customers to such dealers; negotiating terms and conditions of sales of such dealers' Chevrolets to consumers and appraising and purchasing trade-in cars on such sales.

(b) Defendant General Motors Corporation was not precluded from exercising the rights described in sub-paragraph 28(a) hereof by the fact that Chevrolet dealers and salesmen, whether acting individually or on behalf of the defendant dealer associations, requested that said defendants act to comply with the intent and purpose of the Dealer Selling Agreements and thus to preserve and protect the Chevrolet plan of marketing.

(c) Defendant General Motors Corporation had the right by shopping or by accepting shopping information from dealers and defendant dealers associations, to ascertain which dealers were selling Chevrolets in violation of the Dealer Selling Agreements and to request that such dealers undo their violations by repurchasing shopped Chevrolets sold in violation of said agreements.

(d) Defendant General Motors Corporation did not engage in any combination or conspiracy in [fol. 20] un-

reasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act.

Wherefore, defendant General Motors Corporation prays that plaintiff take nothing by its action and that judgment herein be entered in favor of said defendant.

Dated: April 30, 1933.

O'Melveny & Myers, Homer I. Mitchell, Lawler,
Felix & Hall, Marcus Mattson, J. Phillip Nevins.
By /s/ Homer I. Mitchell, Attorneys for De-
fendant, General Motors Corporation.

Of Counsel: Aloysius F. Power, Robert A. Nitschke,
Nicholas J. Rosiello, 3044 West Grand Blvd., Detroit 2,
Michigan.

[fol. 21] Acknowledgment of service omitted in printing.

[fol. 22] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil No. 62-1208-CC

[Title omitted]

ANSWER OF DEFENDANTS LOSOR CHEVROLET DEALERS ASSOCIATION, DEALERS' SERVICE, INC., and FOOTHILL CHEVROLET DEALERS ASSOCIATION—Filed April 30, 1963

Come now defendants Losor Chevrolet Dealers Association (hereinafter "Losor"), Dealers' Service, Inc. (hereinafter "Dealers' Service") and Foothill Chevrolet Dealers Association (hereinafter "Foothill"), and for answer to the complaint on file herein, each admits, denies, and alleges as follows:

Losor, Dealers' Service and Foothill each alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations hereinafter denied "for want of information or belief" and denies each and all of said allegations and places its denials thereof on that ground.

[fol. 23] First Defense

1. Losor, Dealers' Service and Foothill each admits that plaintiff seeks to invoke the jurisdiction of this court on the basis of the statutory provisions referred to in Paragraph 1 of the complaint. Except as hereinabove expressly admitted, Losor, Dealers' Service and Foothill each denies each and every allegation of Paragraph 1 of the complaint.

2. Losor, Dealers' Service and Foothill each admits the allegations of Paragraph 2 of the complaint.

3. (a) Losor, Dealers' Service and Foothill each admits that plaintiff has used the term "Chevrolet automobiles" in the complaint in accordance with the definition adopted by plaintiff in Paragraph 3(a) of the complaint. Except as hereinabove expressly admitted, Losor, Dealers' Serv-

ice and Foothill each denies each and every allegation of Paragraph 3(a) of the complaint.

(b) Losor, Dealers' Service and Foothill each admits that plaintiff has used the term "Chevrolet Dealer" in the complaint in accordance with the definition adopted by plaintiff in Paragraph 3(b) of the complaint. Except as hereinabove expressly admitted, Losor, Dealers' Service and Foothill each denies each and every allegation of Paragraph 3(b) of the complaint.

(c) Losor, Dealers' Service and Foothill each admits that plaintiff has used the term "Southern California area" in the complaint in accordance with the definition adopted by plaintiff in Paragraph 3(c) of the complaint. Except [fol. 24] as hereinabove expressly admitted, Losor, Dealers' Service and Foothill each denies each and every allegation of Paragraph 3(c) of the complaint.

4. Losor, Dealers' Service and Foothill each admits that defendant General Motors Corporation (hereinafter "General Motors") is a corporation. Except as hereinabove expressly admitted, Losor, Dealers' Service and Foothill each denies for want of information or belief each and every allegation of Paragraph 4 of the complaint.

5. Losor, Dealers' Service and Foothill each admits and alleges that Losor is a non-profit corporation, organized and existing under and by virtue of the laws of the State of California, and that the membership of Losor is composed of persons, firms and corporations currently party to a Dealer Selling Agreement with the Chevrolet Motor Division of General Motors and with authorized dealer-premises located in Orange County or Los Angeles County, State of California. Except as hereinabove expressly admitted, or alleged, Losor, Dealers' Service and Foothill each denies each and every allegation of Paragraph 5 of the complaint.

6. Losor, Dealers' Service and Foothill each admits and alleges that Dealers' Service is a non-profit corporation, organized and existing under and by virtue of the laws of the State of California, and, that the membership of Dealers' Service is composed of persons, firms, and corporations currently party to a Dealer Selling Agreement with the Chevrolet Motor Division of General Motors and with authorized dealer-premises located in the County of Los Angeles, State of California. Except as hereinabove ex-

pressly admitted or alleged, Losor, Dealer's Service and [fol. 25] Foothill each denies each and every allegation of Paragraph 6 of the complaint.

7. Losor, Dealers' Service and Foothill each admits and alleges that Foothill is a non-profit corporation organized and existing under and by virtue of the laws of the State of California, and that the membership of Foothill is composed of persons, firms, and corporations currently party to a Dealer Selling Agreement with the Chevrolet Motor Division of General Motors and with authorized dealer-premises located in the Counties of Los Angeles, Riverside, or San Bernardino, State of California. Except as hereinabove expressly admitted, or alleged, Losor, Dealer's Service and Foothill each denies each and every allegation of Paragraph 7 of the complaint.

8. Losor, Dealers' Service and Foothill each denies for want of information or belief each and every allegation of Paragraph 8 of the complaint.

9. Losor, Dealers' Service and Foothill each denies each and every allegation of Paragraph 9 of the complaint.

10. Losor, Dealers' Service and Foothill each admits and alleges that component parts of Chevrolet automobiles are produced by or for the Chevrolet Motor Division of General Motors in plants located in various States of the United States; and, admits and alleges that these parts are shipped to various assembly plants operated at various locations in the United States including Van Nuys and Oakland, California; and, admits and alleges that some Chevrolet automobiles shipped to Chevrolet dealers in [fol. 26] southern California are assembled in assembly plants located in Van Nuys and Oakland, California, and that some Chevrolet automobiles are shipped to such Dealers from assembly plants located outside of California. Except as hereinabove expressly admitted or alleged, Losor Dealers' Service and Foothill each denies for want of information or belief each and every allegation of Paragraph 10 of the complaint.

11. Losor, Dealers' Service and Foothill each denies each and every allegation of Paragraph 11 of the complaint.

12. Losor, Dealers' Service and Foothill each denies for want of information or belief each and every allegation of Paragraph 12 of the complaint.

13. Losor, Dealers' Service and Foothill each denies

for want of information or belief each and every allegation of Paragraph 13 of the complaint, except admits that in 1960 and continuing to early 1961, some Chevrolet dealers in southern California entered into agreements or understandings with discount houses and referral services, pursuant to which such discount houses and referral services performed some merchandising functions in the sale of some of the Chevrolets owned by such dealers.

14. Losor, Dealers' Service and Foothill each denies each and every allegation of Paragraph 14 of the complaint, except admits that in accordance with the agreements or understandings admitted in Paragraph 13 hereof, some discount houses and referral services performed, in the sale of some of the Chevrolets owned by dealers who were parties to such agreements or understandings, one or [fol. 27] more of the merchandising functions described in sub-paragraphs (a), (b), (c) and (d) of paragraph 14 of plaintiff's complaint; and, except denies for want of information or belief the allegations of sub-paragraph (e) of paragraph 14 of plaintiff's complaint.

15. Losor, Dealers' Service and Foothill each denies for want of information or belief each and every allegation of Paragraph 15 of the complaint.

16. Losor, Dealers' Service and Foothill each denies each and every allegation of Paragraph 16 of the complaint.

17. Losor, Dealers' Service and Foothill each denies each and every allegation of Paragraph 17 of the complaint.

18. Losor, Dealers' Service and Foothill each denies each and every allegation of Paragraph 18 of the complaint.

19. Losor, Dealers' Service and Foothill each denies each and every allegation of Paragraph 19 of the complaint.

Second Defense

20. During the period of the offense charged in the complaint, the Chevrolet Motor Division of General Motors (hereinafter "Chevrolet Motor Division") caused Chevrolets to be marketed in southern California by dealers under a plan of marketing evidenced by and embodied in written Dealer Selling Agreements, identical in form, entered into by the Chevrolet Motor Division with each of its dealers in such area. Each such dealer entered into its Dealer [fol. 28] Selling Agreement with the Chevrolet Motor

Division with knowledge of and because of the Chevrolet Marketing Plan, the reputation of the Chevrolet Motor Division, and the customer acceptance for Chevrolet products.

21. Each Dealer Selling Agreement assigns to the dealer an area of primary sales responsibility but leaves the dealer free to sell Chevrolets at any price to anyone wherever he may live, work or have a place of business, each requires the dealer to establish a place of business at a location or locations approved by the Chevrolet Motor Division; and each requires the dealer to refrain from establishing another place of business or branch sales office at any other location without the approval of the Chevrolet Motor Division. In the Los Angeles Metropolitan Area each dealer's area of primary responsibility is the entire Metropolitan Area and the Metropolitan Area Addendum to the Dealer Selling Agreement, applicable to each Chevrolet dealer in the Los Angeles Metropolitan Area, provides in writing that the Chevrolet Motor Division will not increase the number of dealers or change the location of any dealer's place of business without 60 days notice to each dealer in the Metropolitan Area and an opportunity to be heard.

22. Since the provisions of the Dealer Selling Agreements require the dealers to refrain from the establishment of additional places of business or branch sales offices without approval of the Chevrolet Motor Division, these agreements prohibit dealers from establishing, without approval of the Chevrolet Motor Division, the equivalent of additional places of business or branch sales offices and from accomplishing by indirection or subterfuge the establishment of additional places of business or branch sales offices. For a dealer to arrange with a discount or [fol. 29] referral house operating a place of business at a location not approved by the Chevrolet Motor Division to have such discount or referral house perform merchandising functions in the sale of such dealer's Chevrolets including engaging in the business of referring customers to such dealer, negotiating terms and conditions of sales of such dealer's Chevrolets to consumers and appraising and purchasing trade-in cars on such sales is a way whereby the dealer provided for himself what was in substance and effect an additional and unauthorized place of business or

branch sales office without approval of the Chevrolet Motor Division.

23. Having regard to substance rather than to form, the Dealer Selling Agreements require Chevrolet dealers to refrain from having or performing agreements or understandings with discount or referral houses having places of business at locations not approved by the Chevrolet Motor Division whereby such houses engage in the business of referring customers to such dealers with such dealers negotiating the terms of sale with the customer, or whereby such houses negotiate the terms of sale of the Chevrolet with the customer and whereby such dealers, upon instructions from such houses, register title to the Chevrolet in the name of the customer. Under either such form of transaction, and under any combination thereof, the agreement or understanding is one in which the dealer uses discount or referral houses operating places of business at locations other than the dealer's approved location, to perform merchandising services for such dealer in the sale of his Chevrolets. Such agreements and understandings with discount or referral houses and their performance violate the said Dealer Selling Agreements.

[fol. 30] 24. Each Dealer Selling Agreement also provides that it is made in reliance upon the personal qualifications and business ability of the persons who own and operate the organization designated as the "Dealer"; that the "Dealer" shall perform the operating requirements of the agreement including the sale of Chevrolets, pursuant to the selling privilege granted to the "Dealer", in a manner which will preserve the good will of Chevrolet products; and that the "Dealer" shall not, without consent of the Chevrolet Motor Division, transfer to others the "Dealer's" obligation to perform the operating requirements of the agreement including the requirement to sell the Chevrolet products in accordance with the selling privilege granted to the "Dealer".

25. Since the Dealer Selling Agreements obligate the "Dealer" not to transfer to others the "Dealer's" obligation to perform the operating requirements of the agreements including the requirement to sell Chevrolet products in accordance with the selling privilege granted to the "Dealer" without the consent of the Chevrolet Motor Division, the Dealer Selling Agreements prohibit dealers

from arranging with a discount or referral house, without consent of the Chevrolet Motor Division, to have such discount or referral house perform merchandising functions in the sale of such dealers' Chevrolets including engaging in the business of referring customers to such dealers, negotiating terms and conditions of sales of such dealers' Chevrolets to consumers and appraising and purchasing trade-in cars on such sales.

26. The non-transfer provisions of the Dealer Selling Agreements referred to in paragraphs 24 and 25 hereof require Chevrolet dealers to refrain from having or performing agreements or understandings with discount or referral houses whereby such houses engage in the business of referring customers to such dealers with such dealers negotiating the terms of sale with the customer, or whereby such houses negotiate the terms of sale of the Chevrolet with the customer and whereby such dealers, upon instructions from such houses, register title to the Chevrolet in the name of the customer. Under either such form of transaction, and under any combination thereof, the agreement or understanding is one in which the dealer transfers to discount or referral houses the dealer's obligation to perform the operating requirements of the Dealer Selling Agreement, including the requirement to sell Chevrolet products in accordance with the selling privilege granted to the "Dealer". Such agreements and understandings with discount or referral houses and their performance violate the said non-transfer provisions of the Dealer Selling Agreements.

27. The location limitation provisions of the Dealer Selling Agreements and the requirement of said agreements that the Dealer's sales of Chevrolets be made by the Dealer and not by someone else, were developed and adopted as a part of a marketing plan which, recognizing the special nature of the product, was designed to and does preserve the good will of Chevrolet, provide adequate sales, automotive service and spare parts facilities, and promote competition by Chevrolet dealers with dealers in other makes of automobiles and by Chevrolet dealers among each other.

28. The Chevrolet marketing plan is based upon the principle that there should be a carefully balanced number of dealer outlets situated at carefully selected loca-

tions and that each Dealer will have a reasonable profit opportunity in return for his investment. The location limitation provisions of the Dealer Selling Agreements [fol. 32] implement this principle. Thus, said Dealer Selling Agreements are, in southern California, necessarily and properly interrelated one to the other, particularly in respect of the location limitations hereinabove described. Failure of the dealers to abide by said location limitation provisions would disrupt and defeat said marketing plan, and would diminish competition by Chevrolet dealers with dealers in other makes of automobiles and by Chevrolet dealers among each other.

29. The requirement of said Dealer Selling Agreements that the Dealer's sales of Chevrolets be made by the Dealer and not someone else, was designed to and does assure that responsibility for sales and service of Chevrolets will be in the hands of properly trained and adequately financed persons so that a high level of good will can be established and maintained. Failure of the dealers to abide by said provisions would disrupt and defeat said marketing plan, and would diminish competition by Chevrolet dealers with dealers in other makes of automobiles and by Chevrolet dealers among each other.

30. Under the Dealer Selling Agreements a Chevrolet dealer has the right to sell Chevrolets at any price to anyone wherever he may work, live or have a place of business. Each Chevrolet dealer under his Dealer Selling Agreement has a location advantage agreed upon between said dealer and the Chevrolet Motor Division, which gives said dealer a right that other Chevrolet dealers will not establish outlets and locations other than at a location agreed to by Chevrolet Motor Division under the Chevrolet Marketing Plan. Under such agreements, a Chevrolet dealer is not guaranteed or granted any markets, territories, or customers, nor is he denied or excluded from any markets, [fol. 33] territories or customers; there is neither territory security, territory exclusivity nor customer exclusivity. Each dealer is free to compete both with other Chevrolet dealers and with dealers in other makes of automobiles.

31. The purpose and effect of the location limitation provisions and of the requirement that the Dealer's sales of Chevrolets be made by the Dealer and not by someone else are to make the Chevrolet Motor Division and each of

its dealers strong competitors against dealers of other makes of automobiles; and, at the same time, to preserve the freedom of all Chevrolet dealers to compete among themselves.

32. The location limitation provisions and the requirement that the Dealer's sales of Chevrolets be made by the Dealer and not by someone else are valid, do not constitute an unreasonable restraint of competition and do not violate Section 1 of the Sherman Act.

33. The above-mentioned location limitation provisions and the requirement that the Dealer's sales of Chevrolets be made by the Dealer and not by someone else (the "non-transfer" provisions) being valid:

(a) Each Chevrolet dealer in southern California has a lawful interest in the adherence to the location limitations of his agreement with the Chevrolet Motor Division, by every other Chevrolet dealer;

(b) Each Chevrolet dealer in southern California has a lawful interest in the adherence to the "non-transfer" provisions of his agreement with the Chevrolet Motor Division, by every other Chevrolet dealer;

[fol. 34] (c) Losor, Dealers' Service and Foothill each have a lawful interest in the adherence by each Chevrolet dealer in southern California to the location limitations of the Dealer Selling Agreements and of the Chevrolet Marketing Plan;

(d) Losor, Dealer's Service and Foothill each have a lawful interest in the adherence by each Chevrolet dealer in southern California to the "non-transfer" provisions of the Dealer Selling Agreements and of the Chevrolet Marketing Plan;

(e) Losor, Dealers' Service and Foothill each has a lawful right to act in behalf of its own interest as well as on behalf of its member Chevrolet dealers' interest:

- (1) to request that the Chevrolet Motor Division take steps to cause Chevrolet dealers to cease conduct which was violative of the Dealer Selling Agreements, and the Chevrolet Marketing Plan; and,
- (2) to ascertain which Chevrolet dealers were en-

gaging in such conduct and to advise the Chevrolet Motor Division of the facts ascertained.

(f) Losor, Dealers' Service and Foothill individually or as a group, did not engage in any combination or conspiracy in unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act.

34. Losor, Dealers' Service and Foothill each engaged in activities concerned with the passage of legislation and [fol. 35] enforcement of the California Motor Vehicle Dealer and Salesman Licensing Laws (Cal. Veh. Code Sec. 11,700 et seq.; 11,800 et seq.), during the period of the offense charged in the complaint. To the extent that any act, deed or transaction charged in the complaint was so directed, such conduct does not violate Section 1 of the Sherman Act.

Wherefore, defendants Losor, Dealers' Service and Foothill each prays:

1. That the Court adjudge and decree that defendants Losor, Dealers' Service and Foothill and each of them have not engaged in a combination and conspiracy in violation of Section 1 of the Sherman Act;
2. That the complaint herein be dismissed; and,
3. That defendants Losor, Dealers' Service and Foothill and each of them have such other and further relief as to the Court may seem just and proper.

Dated: April 30, 1963

Hansen & Dolle and Victor R. Hansen and Glenn S. Roberts. By: /s/ Victor R. Hansen, Attorneys for defendants, Losor Chevrolet Dealers Association, Dealers' Service, Inc., and Foothill Chevrolet Dealers Association.

Acknowledgement of service omitted in printing.

[fol. 35a] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF CALIFORNIA, CENTRAL DIVISION

HONORABLE CHARLES H. CARR, Judge Presiding

No. 62-1208-CC Civil

UNITED STATES OF AMERICA, Plaintiff,

v.

GENERAL MOTORS CORPORATION, ET AL., Defendants.

**Reporter's Transcript of Proceedings on Motion of Plaintiff
for Pretrial Conference—September 23, 1963**

[fol. 35b] APPEARANCES:

For the Plaintiff: Robert C. Weinbaum, Maxwell M. Blecher, Antitrust Division, Department of Justice, 1602 U.S. Post Office and Court House, Los Angeles 12, California.

For Defendant General Motors: O'Melveny & Myers. By: Homer I. Mitchell, 433 South Spring Street, Los Angeles 13, California; and Lawler, Felix & Hall. By: Phillip Nevins, 603 West Olympic Boulevard, Los Angeles 15, California; and Nicholas J. Rosiello.

For Defendants Losor, Foothill and Dealers' Service, Inc.: Glenn S. Roberts, 458 South Spring Street, Los Angeles 13, California; and Hansen & Dolle. By: Victor R. Hansen, 453 South Spring Street, Los Angeles 13, California.

[fol. 35c] Los Angeles, California, Monday, September 23,
1963, 2:00 P.M.

The Clerk: Item No. 7 on the calendar, 62-1208-CC Civil, United States v. General Motors Corporation, hearing motion of plaintiff for pretrial conference.

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[fol. 35d] COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Before you go on, maybe you ought to educate me just a little bit, counsel. I have read the pleadings. Do I understand that this is a charge—you are asking really for a restraint of certain things that are being done by General Motors and their dealers, is that right? You are asking to restrain them?

Mr. Blecher: Yes, we are, your Honor.

The Court: And the thing that you are claiming is that by arrangement of some sort General Motors is endeavoring to, supposedly to prevent their dealers from dealing with cut price places and so on, is that correct, is that the story?

Mr. Blecher: Not precisely, your Honor. It is close. We charge that General Motors is engaged in a conspiracy with the three associations, which are composed of substantially all the Chevrolet dealers in this area, and with certain of those dealers, the crux of which has been that the dealers will no longer deal with discount houses or referral services.

Now, your characterization of these folks as cut price—

The Court: Well, it is one and the same thing, isn't it?

Mr. Blecher: Not necessarily. We are not really concerned in this litigation with whether or not—

The Court: It reduces the price then by volume?

[fol. 35f] Mr. Blecher: Pardon me?

The Court: It is reducing the price by volume, that is what it amounts to.

Mr. Blecher: That more or less epitomizes our view, yes, your Honor. Not that they sold for less, but that there was an affectation of the price structure as a result of this form of competition.

We don't care whether or not the discount houses sold for more or less than the Chevrolet dealers. Unfortunately, we got involved in the prior litigation and had a big to-do about that point which is not really a part of our case and which we propose to eliminate, insofar as we can, from this case.

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[fol. 36]

[File endorsement omitted]

[fol. 37] APPENDIX A TO REPORTER'S TRANSCRIPT
OF PROCEEDINGS—Filed June 1, 1964

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil No. 62-1208-CC

[Title omitted]

STIPULATION OF FACTS NUMBER SIX

Plaintiff and each of the defendants, through their respective counsel, hereby stipulate as follows:

1. That the persons whose testimony is attached hereto in the form of "designations," "cross-designations" and [fol. 38] "reply designations" would, if called as witnesses, testify to the facts set forth therein.

2. That the "designations," "cross-designations," and "reply designations" covered by this stipulation may be offered into evidence and when received shall be deemed to constitute a part of the Reporter's Transcript of Proceedings herein (without the necessity of the Reporter copying the same into the Reporter's Transcript) with the same force and effect as though the witness whose "designation," "cross-designation" or "reply designation" is received had testified in person; that the testimony so received shall be governed by the same rules and treated in the same manner as though the witness had testified in person and that said "designations," "cross-designations" and "reply designations" shall be referred to hereinafter as "Appendix A to Reporter's Transcript of Proceedings."

3. That said "designations," "cross-designations," and "reply designations" are agreed statements in narrative form taken from the Reporter's Transcript of the testimony of said witnesses in *United States v. General Motors Corporation, et al.*, Criminal No. 30132, in the above entitled court, or are questions and answers copied from the Reporter's Transcript in said action; that said "designations" and "reply designations" were selected by plaintiff [fol. 39] and that said "cross-designations" were selected by the defendants indicated.

4. It is expressly understood and agreed that:

(a) This stipulation is for the purpose of the above-entitled case only;

(b) Plaintiff and each defendant reserves the right to object to the receipt into evidence of any fact herein stipulated on any ground or grounds.

Dated: May 20, 1964.

Maxwell M. Blecher, Robert C. Weinbaum. /s/ By
Maxwell M. Blecher, Attorney, Department of
Justice. O'Melveny & Myers, Lawler, Felix &
Hall, Aloysius F. Power, Robert A. Nitschke,
Nicholas J. Rosiello, By Homer I. Mitchell. Han-
sen & Dolle, Glenn S. Roberts, By Victor R.
Hansen, Attorneys for Defendants.

It is so Ordered this 1 day of June, 1964.

Charles H. Carr, United States District Judge.

[fol. 40]

VICTOR O. GERETZ

Designation by Plaintiff

My name is Victor O. Geretz. I reside at 6848 Shoup Avenue, Canoga Park, California.

I am a lawyer engaged in the private practice of law with the firm of Hertzberg and Geretz in Los Angeles.

In 1960, I bought a 1960 two-door Corvair by arranging for the purchase through the Fedco, Inc. discount store on Slauson Boulevard.

Prior to going to the Fedco store, I went to a Chevrolet dealer (Nugent Chevrolet) to obtain prices on various models of Chevrolet. Then I went to the Fedco store which referred me to another Chevrolet dealer—Bruder Chevrolet. I was referred to a specific salesman at Bruder named Mr. Adams, who gave me a price on the particular car which I was interested in at the time. I signed a purchase order for the car (a Monza model Chevrolet Corvair), but never took delivery of the car because although I was informed at that time that there would be a waiting

period of about three weeks, I subsequently decided that I didn't want to wait that long.

During this interim period I stopped at Courtesy Chevrolet, a dealership near my office, to check prices on the 700 series two-door Corvair. Then I went back to Bruder [fol. 41] Chevrolet and saw the same referral salesman, Mr. Adams, whom I informed that I no longer wanted the Monza, but would like a price on the 700 series model. I purchased this car from Bruder Chevrolet, going through the same procedure with Mr. Adams that I went through when I was originally referred to this agency by Fedco. In addition, the automobile was financed through the Fedco store.

When I purchased my car from Bruder Chevrolet, I obtained a new car warranty, and subsequently I had some major work done by Bruder under the warranty, which was completed satisfactorily.

When I went to the Fedco store I didn't know which Chevrolet dealer I would be getting my car from. There were no cars on display there. There were no signs on the premises indicating that the facilities were part of a Chevrolet dealership or were affiliated with a Chevrolet dealership. There was no literature indicating the Fedco store was affiliated with a Chevrolet dealership. The sales person at the Fedco store did not represent to me that he or she was acting as a Chevrolet dealer. I did not believe that the Fedco store was a franchised Chevrolet dealer.

Q. Were you satisfied with your transactions with Fedco?

A. I was.

[fol. 42] Q. From your experience, do you believe there are any advantages in purchasing a car through a Fedco referral service, rather than purchasing a car directly from a Chevrolet dealer?

A. I do.

Q. What are those advantages?

A. To me the important advantage is the fact that I don't have to engage in any kind of bargaining when I go out to buy a new car. I have confidence that I am getting the best price possible under the circumstances. It is a simple way of doing it, and it is a sort of painless way of doing it.

Q. Would the fact that you might get a lower price if you shopped another six dealers be justification for you to bypass Fedco, in your own mind?

A. Not really, because I just don't like the idea of going in and bargaining for the car.

Q. If you were to buy another car, would you return to Fedco for referral?

A. If they could refer me for the car that I was interested in, I certainly would.

[fol. 43] I didn't, after getting this price from Bruder, go back to Courtesy or Nugent to see if they would meet that price. I have heard of people shopping around among Chevrolet dealers or other automobile dealers, but I don't know as a fact that Chevrolet dealers are competing with each other pricewise. I know that as a matter of, let's say, advertising or reputation, but not as a fact. I have not had any experience other than this one purchase that I have testified about, but I am satisfied from that experience that the best way for me to buy a car is through Fedco.

Q. Well, so that really you don't know whether it is better to buy a car through Fedco or to shop Chevrolet dealers, do you, when it comes right down to it?

A. Well, I know it is better for me to do it a certain way.

Q. And without knowing whether or not you could shop Chevrolet dealers and get even a better price, you are willing to give an opinion, are you, Mr. Geretz, that the best way to buy a car is through Fedco?

A. Sir, my opinion relates to the best way for me.

[fol. 44] Q. Oh—

A. The best way for me. I feel it is to do it the way I did it and I think I would do it the same way again.

Cross-designation by All Defendants

The Fedco store on Slauson was a conglomeration of store buildings that were next to each other. They had merchandise of a general nature; soft goods, appliances of various kinds, hardware items, automobile accessories, gardening supplies, nursery supplies, clothing, and things like that. I don't remember whether the Slauson store had furniture there at that time or not. They were sort of limited in space. Since then they have built a new facility on La Cienega. The Fedco store is sort of a gen-

eral merchandise place, in some respects like a department store and in other respects not. It was a place of business where they merchandised various kinds of personal property.

As part of their business, they had what they called a referral service. If one was interested in buying an automobile, they would refer a member to an automobile dealer who sold a particular automobile that the member might be interested in. They were really helping the automobile dealer sell his automobiles, as well as helping the member. [fol. 45] The automobile financing was handled in a different part of the particular store on Slauson. They had a counter in the store, as I recall, that handled insurance and also financing. I believe that as a member of Fedco I could finance my automobile purchases there whether I bought the automobile through Fedco or otherwise. One of my privileges as a Fedco member was to buy insurance and financing, so even though I bought the automobile directly from Bruder, I could have gone to Fedco and financed it if I had wanted to.

At the time of my purchase of the automobile I was living on San Vicente Boulevard near Hauser Boulevard. I think the closest dealer to my residence at that time was Nugent Chevrolet. Courtesy Chevrolet is near my office.

I now live in Canoga Park and have my servicing on major work done at Clem Ruh Chevrolet in Canoga Park. I think it is a good idea to have the car serviced by a dealer who handles that particular car as a new car dealer.

[fol. 46]

GEORGE A. CAHHAL

Designation by Plaintiff

My name is George A. Cahhal. At the present time I am office supervisor for New Departure Division of General Motors, located at 3650 South Broadway, Los Angeles. I have been employed by the New Departure Division for approximately ten years.

In January 1959 I had occasion to purchase a new Chevrolet Impala Sport Coupe. I arranged for the purchase of this automobile through Certi-Bond Discount Store in

Torrance. The Union Car Sales Company is located in Certi-Bond's. I learned about Union Car Sales at Certi-Bond from a number of people.

I believe I talked to Mr. Chico at Certi-Bond store. I told him what I wanted in the way of an automobile and asked him what he could do in the way of delivering one to me, and he figured out what the car would cost me, how much it would cost per month to pay for it and then we consummated the deal. I had a trade-in at that time which I traded in through him. I took delivery of my Chevrolet at Certi-Bond. At the time I took delivery I didn't know where the car was coming from. After I took delivery I knew because they gave me the service (warranty) policy [fol. 47] and I believe the name of the dealer (Ernie Porter Chevrolet in Pasadena) was on the warranty. I had occasion to have the car serviced under the warranty at Ernie Porter Chevrolet and was treated well there and they took care of the things I asked them to take care of.

Prior to making the purchase through the Certi-Bond Store in this manner I had contacted about three or four dealers in the immediate vicinity of Maywood where I was living at the time.

I purchased a 1960 Chevrolet Corvair through Certi-Bond the following year. I traded in the 1959 Impala which I had purchased from Certi-Bond for the 1960 Corvair. It was approximately a year and a half after I purchased the 1959 car that I traded it in for the 1960 car. I did not shop at any Chevrolet dealers prior to returning to the Certi-Bond Store. I took delivery of the Corvair at the Certi-Bond Store and received a new car warranty at that time. The car came from Courtesy Chevrolet. I had it serviced under the warranty at Courtesy Chevrolet and I was treated properly there.

I am satisfied with my transactions with Certi-Bond.

[fol. 48] Cross-designation by All Defendants

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[fol. 49] I believe the Certi-Bond Store is like most of the discount stores in Southern California. It has appliances, housewares, dry goods, jewelry departments—that type of thing. It is on the order of a conventional depart-

ment store; the same breadth of merchandise and the same type of operation. It is really a merchandising location.

Union Car Sales had a section or a corner of the Certi-Bond Store in Torrance, California. They had a couple of desks and two or three file cabinets and they had brochures on different types of automobiles including Chevrolet. They had a sign saying "Automobile" or "Car Department" or something to that effect. When I bought the first car, there were a couple of automobiles on the floor. To the best of my knowledge there were no Chevrolets on the floor.

Def. GM Ex. K is a copy of the State of California vehicle registration of the 1959 Impala I purchased. A copy of it was placed on the windshield of the car. It bears my name and my wife's name, our address, and the model of the car we purchased. Def. GM Ex. L is the invoice from Ernie Porter Chevrolet covering the sale of the car to my wife [fol. 50] and me. I never saw that invoice in connection with the transaction. Mr. Chico never disclosed to me that Ernie Porter invoiced the car to me.

There was a delay of about eight weeks in the delivery of this car. I waited about two weeks, I guess, at which time I thought I should have had delivery of the car, and I started calling Mr. Chico and asking about delivery of it. This went on for about eight weeks. I called him at least once a week, sometimes twice a week. He was postponing delivery, giving me a new delivery date about when he thought it would be in; or else he would stall me and tell me to check back with him and he would get something more definite on it for me. He did not tell me what was the matter, just "delivery from the factory." I wouldn't say those were his exact words, but I assumed it from what he said.

Q. Did he say he had any connection with the factory?

A. No, sir, he did not, not in so many words.

Def. GM Ex. M is a copy of an invoice from Union Car Sales to me and Mrs. Cahhal showing a Chevrolet Corvair model 727. Def. GM Ex. N is an invoice from Courtesy Chevrolet to my wife and I covering the same car. I [fol. 51] haven't seen that before.

Q. I would like to point out something to you, Mr. Cahhal, please. Your invoice from Union Car Sales, exclusive of sales tax and license, as you said a moment ago, was \$2140; is that right?

A. Yes, sir.

Q. And the document just introduced into evidence by which Courtesy Chevrolet invoiced the car to you shows a price, exclusive of sales tax and license, of \$2384—I mean \$2083.44; is that correct?

A. That's correct, yes, sir.

Q. So that you see a difference there of \$56.56?

A. Yes, sir.

Q. You recognize that as being the amount which Certi-Bond or Union Car Sales added on over and above the price at which Courtesy Chevrolet invoiced the car to you, do you?

A. It looks as though, yes, it does.

I did not go to Courtesy Chevrolet before going to Certi-Bond to see if they would sell this car to me for \$56.56 less.

[fol. 52]

OWEN KEOWN

Designation by Plaintiff

My name is Owen Keown. My home address is 1338 Princeton Street in Santa Monica. I have been a Chevrolet dealer since 1927, and the name of my dealership is Owen Keown Chevrolet Company located in Venice, California. I am a member of the Losor Dealers Association, and was a director in 1960. I think I was a director in 1961 as well.

On June 28, 1960, a general meeting of the Losor Dealers Association was held (Pltf. Ex. 171, minutes of the meeting).

Q. Now, do you have any recollection, Mr. Keown, of a report represented in this minute made by Mr. Cone on the discount houses and how to go about eliminating this menace from the car business?

A. Yes.

Q. Will you tell us what he said to the best of your recollection?

A. Well, I couldn't tell you what he said. I don't remember exactly what he said. I could tell you in substance, because I was at that time a director of the Southern California Dealers Association. I attended the same meeting with Mr. Cone. and the meeting was devoted to the

discount house problem, as we called it, or the evil, and at that meeting, then we decided to have a legislative committee look into any laws that were being violated in respect to this kind of selling and any other legal angle of it that they could uncover, and that is in substance what Mr. Cone reported to our meeting.

Q. Now you are talking are you not, sir, about a report that Mr. Cone made or what was discussed and went on in a meeting of the Southern California Dealers Association?

A. Yes. That is what he reported.

Q. Now, do you recall, sir, who made mention of the fact that the Orange County dealers had expended \$750.00 to Cameron Aiken for a report?

A. No, I don't know who said that. Somebody made it, the remark.

Q. Do you know who Cameron Aiken is, sir?

A. He is an attorney.

Q. Was there any discussion at the meeting of June 28, 1960, among the Losor members of whether or not it would be best to proceed along the lines of getting legislation or whether it was better to put the problem directly in the lap [fol. 54] of the Chevrolet Motor Division?

A. Well, we at that meeting, if I remember, we thought that both should be done, but our association wasn't strong enough and big enough to do very much from the legal standpoint, and we thought that we would present what evidence we could to the Chevrolet Motor Division.

Q. Well, was there a decision then made, Mr. Keown, to aggressively pursue the attack on the discount houses by legislative remedy?

A. No.

Q. Well what was decided in respect to the legislation at this meeting of June 28, 1960?

A. At that particular time we felt that that was being adequately done by the Southern California Dealers Association.

Q. You felt therefore there was no need for Losor to make a separate and independent inquiry with respect to legislation. Is that right, sir?

A. That is right because Mr. Cone and I could keep them informed as to what went on.

Q. You decided that the best course of action would be to

take this problem to the Chevrolet Motor Division. Is that correct, sir?

[fol. 55] A. That is right.

Q. And was there a discussion among the members at that meeting concerning whether or not you should in fact take the problem to Chevrolet?

A. Yes, we discussed it.

Q. Now, will you tell us, as best you recall, what the substance of that discussion was by the members then present?

A. Well, the substance of it was that the membership of our Association agreed that the thing to do was to ask Chevrolet to do something about this, to present the evidence that we could accumulate and give it to Chevrolet and let them take the action that was necessary.

It was made as a recommendation and the members agreed to take certain information to Chevrolet. I don't know of any opposition to it. We proposed to take positive proof to Mr. O'Connor, Zone Manager of the Chevrolet Motor Division, that dealers were selling their cars through discount houses. We wanted to know who the dealers were who were selling their cars through discount houses so we could tell Mr. O'Connor.

We considered taking the problem to Chevrolet because the problems became aggravated suddenly because ap-[fol. 56] parently there were more cars being sold through discount houses than there had been up to that time. This was a subject of discussion among the Losor members in June of 1960. The substance of the discussion was that the problem was becoming aggravated, that more and more cars were being sold through discount houses in the Orange County area. The dealers were concerned about the cars being sold through discount houses because it affected their business.

Q. In what way, sir?

A. Lost sales.

Q. They were concerned about the competition created by the discount house referral service method of merchandising?

A. They were.

Q. Which dealers were most concerned about this new form of competition?

A. All the dealers seemed to be concerned that were in that area.

Q. In what area, sir?

A. The Orange County area.

Shortly after the June 28 Losor meeting and before July 26, a group of us called on Mr. O'Connor at the zone office. The persons present were pretty generally the committee named at that meeting to call on him. At this [fol. 58] meeting each person who had evidence that cars were being sold through discount houses presented it to Mr. O'Connor. The meeting lasted 20 or 30 minutes. I think this was the only matter discussed. What we wanted to present to Mr. O'Connor was evidence of the fact that cars were being sold through discount houses and what dealers were doing it. The evidence I submitted to him was an actual order that we placed at the More discount store for a Chevrolet. And I think there were some other orders, documents of that kind. Mr. O'Connor said in substance that he agreed with us that the dealers should not sell their cars in this manner, and that he would talk to them about it. I don't remember O'Connor saying whether or not he was going to ask the dealers to stop selling through discount houses and referral services, but of course that's what we wanted him to do.

On July 26, 1960, at a general meeting of Losor dealers I gave a report on the meeting held with Mr. O'Connor on the subject of discount houses (Plaintiff Exhibit 172, minutes of this meeting). On or about September 27, 1960, according to Plaintiff Exhibit 173 (minutes of another Losor meeting), I reported to a meeting of Losor dealers that Mr. O'Connor had called on each dealer selling through [fol. 58] discount houses and requested them to please stop this source of supply, but I feel very positive that Mr. O'Connor never told me that he had called upon the dealers. This was either an error in my reporting or an error in taking the minutes.

I had a conversation with Warren Biggs and a subsequent conversation with Will Newman, both of whom were doing business with discount houses. Both of them were operating on a referral basis, referrals from discount houses. I asked Newman if he would continue to do so. And he told me he would until he was told not to by the Chevrolet Motor Division. And I asked him why. And he said

if he gave that business up, which he considered extra business over and above the normal business he did, it was beneficial to him and profitable, that he wasn't going to give it up and have some other Chevrolet dealer then take that same business that he was getting; and when the Chevrolet Motor Division told him not to do it, he knew that they wouldn't let some other dealer carry on with it. Mr. Biggs told me that same thing when I talked to him.

In approximately early November I played golf with Warren Biggs and Mr. O'Connor. There was also another dealer present. It was at this golf game that I first had [fol. 59] occasion to discuss the matter of discount house selling with Mr. Biggs. This is the conversation Mr. Biggs refers to in his letter of November 5th, addressed to me (Plaintiff Exhibit 6). I was simply getting information, and I did not attempt to persuade Mr. Biggs to discontinue doing business with Fedco [the referral service]; but I thought this meeting at the country club would provide an opportunity for Mr. O'Connor to make some comment along that line. Mr. Biggs said in front of Mr. O'Connor that if he was asked not to do this by Chevrolet Motor Division, that he would immediately not do it; but until he was asked, he was going to continue, because he thought it was pretty good business, it was extra business, he liked it, and he was going to continue it, because if he didn't, some other dealer then would take that same business. Mr. O'Connor didn't discuss the matter with Mr. Biggs. He was an onlooker and listener, but he made no comments that I can remember. At that time I decided perhaps Mr. O'Connor didn't have the authority to tell Mr. Biggs to give up this business.

A good majority of Losor members attended the annual meeting in Honolulu on November 10, 1960 (Plaintiff Exhibit 175, minutes of this meeting). At this meeting there [fol. 60] was discussion concerning the writing or wiring of letters or telegrams to Mr. Gordon, president of General Motors, Mr. Cole, general manager of Chevrolet Motor Division at that time, and Mr. Staley about the discount house situation. I reported to the Association my meeting with Mr. Biggs and Mr. O'Connor, and I stated that I had concluded that O'Connor did not have the authority or permission to stop the dealers from this activity which we thought should be stopped, this method of selling cars, and

suggested that we write to these people, telling them of our problems and asking for their help. And the dealers present as a group agreed that they would each one do that individually. And some of them volunteered that they would have their salesmen also write letters because they claimed that their salesmen were being affected. The salesmen were losing sales, losing income, due to the fact that cars were being sold through discount houses.

We hoped that Mr. O'Connor would be instructed or otherwise authorized to bring about an end to discount house selling of Chevrolet automobiles in the Southern California area as the result of these letters and telegrams. We were seeking the assistance of the higher echelon officials of Chevrolet and General Motors in bringing about [fol. 61] an end to the discount house sale of Chevrolets.

On December 15, 1960, I attended a meeting of the directors of all three Chevrolet dealer groups at Perino's Restaurant. It think that Mr. Pollard called the meeting. The problem of cars being sold through discount houses was discussed almost exclusively at this meeting. Mr. Pollard explained that he was chairman because Foothill Dealer Association was paying the luncheon bill. And in substance he explained that we were there to discuss the problem of dealers selling cars through discount houses and then he called upon the various dealers in the room to express their opinions as to whether dealers should engage in this kind of practice. And as I remember, there was no opposition to the general feeling that the dealers were not ethical who sold their cars in that manner. Both Mr. Newman and Mr. Biggs took a position in substance or effect opposed to discount house selling. I believed that they were both doing business with Fedco [a referral service] at that time, and it was common knowledge among the dealers that this was the case. At this joint meeting of directors I don't think the Chevrolet dealer selling agreement was a topic of discussion.

Q. Now, what happened after all the dealer's views were [fol. 62] solicited on this matter?

A. Then after everybody had expressed their opinion Mr. Pollard suggested that he thought the better way to proceed was to have a general committee composed of members of the officers of the 3 groups to work together to see what they could do almost as we had done through

Losor, to search out any legal ways that we could stop it, to find out if they were violating any laws, to see if there were any laws that we could maybe have passed in Sacramento to protect us and to do such other research as they could to find out all they could about this particular problem.

Q. To do whatever they could to see that it ended, in other words?

A. Yes.

A committee was in fact appointed.

On December 28, 1960, I attended a meeting of the Losor dealers at which time a report was given to the membership on what happened at the December 15th meeting of the directors of the three dealer associations. I made part of the report.

Subsequent to that time I received a letter from Mr. Staley dated December 16, 1960 (Plaintiff Exhibit 198), [fol. 63] I got a telephone call from Mr. Hawthorne, one of the city managers for the Los Angeles Zone, who works under Mr. O'Connor's supervision. Hawthorne asked me if I sold cars to discount houses, and I told him no. He said, "Well, I have very little to talk to you about then, because I just want to talk to those dealers who do." He said, "I am supposed to ask you not to if you were." Hawthorne told me in substance that he had been instructed to call dealers and find out whether or not they were selling through discount houses. I think at our subsequent Losor meetings we discussed the fact that eventually somebody had called the dealers and asked them not to sell to discount houses. And we were quite pleased about it.

I was a member of the Losor Board of Directors which approved a letter to the membership of Losor (Plaintiff Exhibit 176) asking the membership to express their appreciation for the fine job Chevrolet had done in stopping the sale of cars through discount houses. We thought at the time that they had stopped it, that General Motors had responded to our request and had helped eliminate the sale of Chevrolets through discount houses. We formed this opinion from conversations with other dealers, and the fact that Mr. Hawthorne had called me, and I suppose [fol. 64] their representatives had called them. I don't remember that anybody said that they had stopped, but when we got the word from the city managers, each of

us on the phone, that they were calling all the dealers and ask the offending dealers to stop, that is what we had been asking for.

The Losor Board of Directors authorized the purchase of a Chevrolet car through a discount house. I think it was a telephone conference meeting. We authorized funds for the purpose of buying a Chevrolet through a discount house because by that time we had heard that cars were still being sold through discount houses. So we wanted to present this evidence to Chevrolet. Miss Evelyn Davis from the Losor office went to a discount house; I think it was Gemco. The car was paid for, I am pretty sure. It was paid for with Losor funds. Mr. Henson, and I think Mr. Marion Johnson took the evidence to the zone office.

Sometime around February 1961 I attended a meeting at Brower's Restaurant of the committee which was appointed by Mr. Pollard on December 15th. After that time I discussed with Mr. Henson whether or not Losor should contribute money that might be used for the purchase of other cars. Our board of directors authorized them to continue with this. It was understood at that time those cars were to be purchased that information concerning the purchases would be turned over to the Chevrolet zone office here in Los Angeles.

Prior to a general membership meeting of Losor on April 6, 1961, the Losor Board of Directors voted \$5,000 to the trustee account of Glenn Roberts for the purpose of buying cars and ultimately turning over the data so secured to General Motors. The purpose was to continue what we had been doing. We decided we would have a fund that could be used for the purchase of cars and the investigation to find out if this was still going on through discount houses, and just how they did it. The money was appropriated to Mr. Roberts with the understanding that the information so secured was to be delivered to the Chevrolet Motor Division zone office in Los Angeles. At about the time Losor approved the \$5,000 to Mr. Roberts, the other associations agreed that they would each give \$5,000 for this purpose. I was at the meeting when the Dealers' Service and Foothill representatives said in effect that they would contribute to the fund the same way Losor did. It was understood at that meeting that the information [fol. 66] disclosed as a result using these combined funds

would be made available to General Motors as it had in the past.

Cross-designation by All Defendants

In setting up a dealership and in getting a Chevrolet contract, we agree as dealers to sell and display our cars and, in addition, to furnish a service department, adequate to handle the volume of business that may be in the particular area in which we are doing business. But the service department of a Chevrolet dealership is not a profitable department. Generally it is the opposite, it is a losing department. In my own particular case in years past I have had losses in my service department up to \$3500 per month. In the year 1960 and '61, I cut those losses down to \$1,000 per month, in round figures. The service department thus has to be maintained by the sale of other Chevrolet products, new cars and trucks and parts. We subsidize the service department.

We all recognize the fact that if we didn't have a service department that we could make more money, and we could sell cars at a less cost. The service department is an expense to us. Chevrolet recognizes that the reputation of their product, the good name they have established through [fol. 67] their manufacturing of a car, depends on the way it is serviced. An automobile is not like a piano or some other piece of furniture that you look at. It is something that you use every day on the highway, and it has to have continual service, at least periodic service, if it is going to function right. The present-day automobile is a very complex car. It no longer can be repaired by bailing wire and a monkey wrench and a pair of pliers. It takes an investment in equipment and machinery that costs hundreds and hundreds of dollars for a dealer to properly service the cars that he gets to deliver to the public.

In 1960 Owen Keown Chevrolet sold on the average of 50 or 60 new Chevrolets per month. I think that is a pretty small dealership. We had about 60 employees and more than half of them were employed in the service department; that's including the service salesmen, the service manager, the file clerk, the mechanics, wash men, get-ready men, and so forth. The get-ready men are the ones that get the new cars ready for delivery. We service the cars after the

factory sends them to us. During 1960 we kept a stock of parts and accessories, in dollar terms, of approximately \$60,000.

[fol. 68] Some time around July 1960 I sent one of my salesmen to More's Inc., a discount store in West Los Angeles. He placed an order for a Chevrolet and put a deposit on it. He reported back to me that the automobile referral service had an office in the building and there was a man there who discussed the purchase of the car with him. Mr. Reed, my salesman, asked where he was going to get this car and was told that it would be through Warren Biggs Chevrolet. Mr. Reed had the impression, he told me, that the man at More was working for Warren Biggs. He didn't tell me whether or not the man at the discount store told him that.

I objected to Mr. Biggs selling a car through More Inc., because if they continued to sell cars through discount houses and more discount houses of that type move in my area, I wouldn't be able to be in business very long, and I want to stay in business. If there were very many of them established in my area, and they would sell as many as 10 or 15 cars a month and would deprive me from selling that many per month, I wouldn't even break even. The margin of profit in the Chevrolet operation is just too small to stand that.

So when this matter of dealers selling through discount houses got to be quite an extensive business, we realized [fol. 69] that sooner or later it would affect all of us, because if it was going to be done in Orange County, in certain areas, in large numbers, then there would be nothing to prevent a house of that kind, a discount house, to come into my area—there may be several of them—and all of them sell Chevrolets, and those Chevrolets would be furnished by dealers far away who were not interested in the service, or interested in the welfare of the customer; all they want to do is make a sale.

As far back as July 1960 Mr. O'Connor said he would talk to the dealers about their selling Chevrolets through discount houses. He told us that he didn't think the dealers should sell their cars in that manner, but Mr. O'Connor never told me that he had called upon them. I never did get an answer from him on that. And from that time on every time I would see Mr. O'Connor he would say that

he hadn't had an opportunity to talk to the dealers yet. I thought the golf game would be a golden opportunity for him to talk to a dealer in my presence. But Mr. O'Connor didn't discuss the matter with Mr. Biggs. He was an on-looker and listener, but he made no comments that I can remember. I decided perhaps that Mr. O'Connor didn't have the authority to tell Mr. Biggs not to sell cars in that [fol. 70] manner and I thought maybe I shouldn't embarrass him any further.

The purchase of the new Chevrolet by Evelyn Davis at Schonlaw Chevrolet through Gemco was made in order to convince Mr. O'Connor that Chevrolets were actually being sold through discount houses at that time. It was not done pursuant to his request, and, as far as I know, it was done without his knowledge. The Losor Board of Directors decided that after the evidence was submitted to the Zone Office, one of the dealers in Losor would resell the automobile.

We had Mrs. Davis make a tape recording of the transaction for evidence as to the kind of conversation that was used in the sale of this car. We thought that if we had a good recording, we could present that also to the Zone. I think it was rather jumbled and not very good—I don't remember hearing it myself.

Mr. Henson later told the Board that when they took the evidence of the purchase of this automobile in to Mr. O'Connor, they were very surprised to find that Mr. O'Connor already knew about the purchase of this automobile.

A bird dog is an entirely different thing than a discount [fol. 71] house. The term "bird dog" has a certain meaning in the language of the automobile industry. In the dealer's area where he does business, the salesmen get acquainted with service station operators, people who work in plants and in any location, stores or any place else, and they cultivate his acquaintance and ask him if he will tell him about anybody that wants to buy an automobile; and then, when he buys the automobile, the salesman will give him a portion of his commission. Now, that is called bird dogging, and it has been a very prevalent part of this business. That is an individual matter between the salesman out working his territory and trying to create contacts who will tell him where he might sell a car, and if they

tell him, he rewards him by paying him a certain amount. It can be any amount, five or ten dollars or a bottle of liquor. He is a bird dog for the salesman.

Additional Cross-designation by Defendants Losor Chevrolet Dealers Association, Dealers' Service, Inc., and Foothill Chevrolet Dealers Association

There was no discussion at the Losor meeting in Honolulu [Nov. 10, 1960] concerning what the content of the letters we wrote to Detroit were to be. That was left to each individual dealer. We left it to each individual dealer to express his own opinions.

[fol. 72] At the December 28, 1960 Losor meeting I reported to the membership that the directors of the three associations had met at Perino's on December 15th, and the meeting was conducted by Mr. Martin Pollard, and that Mr. Pollard called on each dealer to express his views relative to the dealer selling cars through discount houses.

I also reported what Mr. Newman had said at that time at that meeting. I told them that after that discussion, that Mr. Pollard appointed a committee to further investigate this matter of discount houses, and what they might come up with legally, that we might use to combat it, either through the violation of licensing laws or any other laws of the State that we could uncover. I made a full report of that meeting, and then I think the other members of the board of directors substantiated my statements.

At no time was there any agreement among the members of the Losor Chevrolet Dealers Association that they would not do business with discount houses and referral services. To the contrary—at one meeting I remember that some dealer made the suggestion that we refuse to trade with dealers who sold cars through discount houses, and he was immediately shouted down and they said we cannot possibly [fol. 73] do this. There never was any agreement of that kind at any time.

The dealer associations, Losor and Foothill and Dealers' Service are each separate entities or corporations. They are in no way a subsidiary of or part of General Motors. The most important purpose of our associations is designated by the name we call them by,—“trading associations.” Back before we formed our Losor group, for in-

stance, it was necessary for dealers to trade with each other by individually calling the dealers whom we thought might find a particular car. It was impossible, even at that time when we didn't have so many automobiles and so many options, to keep all in stock at one time. There was tremendous inconvenience as well as expense to have to go down the list of dealers and call them individually to find out if they had a particular car in stock. So we as dealers in discussing this problem with each other decided to form an association, and it was for the purpose of trading cars.

We thought of we could pay a nominal fund into an association and have an office set up where we had girls that worked for us, we could call that trading center, which we called our Trading Bureau, and ask the girl to find or locate [fol. 74] a particular car that we needed. As time went on that has become more and more important because of the tremendous number of models we have, the tremendous number of options and colors, and it would be physically impossible for a dealer, even the largest dealer, to carry all those cars in stock. We trade with each other and that is the primary purpose of our organization. We pay into our association a fee of so much per car to pay the expenses of our association office and the salaries of the girls. Now, after that was established, then we found it convenient to do other things. We have in recent years, when Chevrolet has put on a campaign, for instance, that has cost the dealers so much to put on a selling campaign, our association, rather than the dealers, have paid that amount so that the cost would be borne by all dealers.

When we first organized this association, our Losor Association also attempted to do some advertising to create public acceptance and to advertise our dealers. We have roughly from 30 to 34 dealers in our dealer association, and we spent some of the funds that we collected from dealers to pay for advertising in various ways. That went on for a number of years and it was quite unsatisfactory, because our group in Losor was advertising entirely independent of [fol. 75] what the city dealers were advertising and the Foothill dealers. The three associations met in 1955 and we decided to form another corporation, solely for the purpose of advertising. That is L.F.D., and we contribute to that. "L.F.D." is the first letter in each of the three associations.

L.F.D. sponsors sports announcements and football and

baseball games. L.F.D. retains an advertising agency and pays them a fee, and they place the advertising for us. A board that is selected by the dealers reviews in advance these advertising matters that they are going to use, whether it is spot announcements, and what the announcements say, or if it is a program for baseball or football or basketball, why, it is presented to that board and they approve it.

Our purpose has been to correct some of the feelings against Chevrolet dealers and perhaps to give us a better image in the public eye. From time to time we also sponsor newscasts, such as the Jack Latham show, Big News, Clete Roberts, Baxter Ward, and George Putnam. We also have sponsored some public service programs, such as Airborne Alert, and Special Report, the X-15. We also discuss common problems in the industry in our meetings. There are many things that we discuss.

The directors of L.F.D. are made up of members from [fol. 76] the three associations.

With reference to the dealers who sold through discount houses and those that were known to the association as having done so, or continued to do so, there was no pressure placed on them, and no disciplinary action taken by the association against these members. Our purpose was not to take action; our purpose was to gather information. We wanted to find out all we could as to how these cars were sold. We didn't deny any of the dealer members the service of the trading bureau because they happened to be selling through discount houses and we didn't threaten to. We never made any threats. We didn't even make any request of any dealer not to sell. We were very careful not to. The cordial relationships between the members of the associations continued on through this entire period of the problem of discount houses. Our functions we carried on just the same as we always did. We carried on our regular business, with the addition of investigations we made of the activities that were going on through the discount houses.

The activity of the associations—engaging in obtaining information—was done for the purpose of submitting it to General Motors, and also for the purpose of possible [fol. 77] legislation. That was our sole purpose in doing it. We had no other purpose than to present to Chevrolet what we could find out through our investigation as to how

it was done, and to have positive proof that it was being done. It wasn't our place to enforce anything or cause any dealer not to sell. That information was transmitted to Chevrolet for their action, and we assumed that Chevrolet would have the right to take such action. If they didn't they would tell us. They never did tell us that they didn't have the right to.

In the year 1960, we did not know whether the discount houses and referral services in Southern California held dealers licenses from the Department of Motor Vehicles in the State of California. We tried to find this out through investigation.

At the December 15 meeting Mr. Pollard appointed a committee. The purpose of the committee was to try to find out all we could about this matter. They were told to find out what violations, if any, might be going on, and what laws might be violated, State or licensing laws. Get any other information that they could. I don't remember specifically the instructions, but that's generally as I remember it.

[fol. 78] Plaintiff's Reply Designation

Q. Let's suppose I bring a Chevrolet in to your place of business and the motor is hardly running and your mechanic tells me it needs a motor overhaul; what happens then, Mr. Keown? I say, "Go ahead and fix it up."

A. Then the service salesman writes up an order at your request and states what you want done on that automobile. And then the order is given to the dispatch office and it goes to the mechanic who is supposed to do that work. And he does it and it goes back and is billed out to you.

Q. I get a bill at the end?

A. You get a bill.

Q. The bill has a distinction usually between parts and labor?

A. Yes, it does.

Q. When my engine is going to be overhauled, I get a lot of parts put in there, don't I?

A. Yes.

Q. And it is the same thing if I have a transmission fixed, there are parts and there is labor?

A. That's right..

Q. If I want a new set of valves put in, I have some [fol. 79] parts and some labor?

A. Yes.

Q. Practically everything I have done on the car involves parts and labor?

A. That's right..

Q. And you bill me separately, you show me at the end how much parts you use and how much labor is involved; is that right, sir?

A. That is correct.

Q. How is that reflected on your accounting records as part of your income or loss from service?

A. The parts department is not the service department. The loss from the service department is only from the service.

Q. The loss on service reflects only the labor, does it not?

A. The operation of the service department, yes.

Q. The operation of what you call the service department as a bookkeeping matter means only labor, does it not, sir?

A. Yes, sir, that's what the service department is, is the labor on cars.

Q. That's what you think it is, but actually you are putting in parts and labor, aren't you?

[fol. 80] A. That is the parts department that handles parts.

Q. That's what you consider a parts department, but I am saying when I come in to buy a car, I pay you for parts and labor, don't I—when I get my car fixed?

A. You do if there are parts used. Sometimes there is only labor.

Q. But most of the time there are parts used?

A. Yes. But many times there is only labor, too.

Q. But more substantial repairs involve parts, don't they?

A. Yes, substantial repairs.

Q. There are some 2,000 moving parts, and when something goes wrong with the car, some of those 2,000 parts have to be replaced or repaired; is that right?

A. Yes, sir, I agree.

Q. Most of the time if you have any substantial amount of work done you are getting both parts and labor?

A. Yes, for a substantial job you would.

Q. All right. I would like to show you the 1960 financial [fol. 81] statement of Owen Keown Chevrolet. I think you told us that you sustain a loss in your service department of \$1,000 a month; is that right, sir?

A. Yes.

Q. That would be about \$12,000 a year?

A. Yes.

Q. I invite your attention to page 3, to the caption "Departmental Income and Expense," under column C, Service Department, and this appears to reflect a loss of \$3,473.10 for the year ending December 1960; is that right?

A. That's true.

Q. That would be about \$300 a month loss rather than \$1,000; is that right, Mr. Keown?

A. Yes.

Q. I would like to invite your attention to the column headed "Parts and Accessories Account," and invite your attention to the fact that you reflect a profit there of \$17,820 for the year ending 1960; is that right?

A. That is correct.

Q. That is really part of the same operation, when you fix a car up you put in parts and you put in labor, is it not?

A. That's right.

[fol. 82] Q. If we put the two of these together, your parts and labor and accessories, that is the entire service operation of your dealership, it would reflect a profit of over \$14,000, isn't that right?

A. That is not right.

Q. Why is that not right?

A. Because you have completely forgotten this column headed "Administrative". Now, up until just a few years ago the administration was divided up and prorated between departments, but the Chevrolet Motor Division wanted us to have this changed so that none of this administration was put in these departments. We now have to allocate them to find out what our actual profit or loss is in those departments, and we divide them up.

So you have to take the cost of administration and apply the formula that they let us use to find out how much more we have lost in the service department. Because those departments have to pay for administration, too.

Q. They give you a formula, then, to break this approximately \$31,000 figure down?

A. Yes.

Q. What is that formula?

A. About 31 per cent, I think, is labor.

[fol. 83] Q. 31 per cent—

A. For the service department.

Q. How much for parts and accessories?

A. I don't remember.

Q. So if we took about \$10,000 or \$11,000 off of that \$15,000, we would still have a plus figure rather than a minus figure.

A. I was talking about the service department when I talked to you; not about the parts department.

Q. You told us you lost on your service. You are considering only the labor?

A. That's right, service department.

Q. You are not considering the fact when you repair a car you put in parts, as well as labor, and on the parts you reflect a net profit before deducting for administrative expense?

A. I was talking about the service department. I said that loss had to be made up by the other departments in the business. And the parts department is one of them.

Q. And do you make it up, in fact, in part, in repairing cars?

A. We make it up by selling cars, too.

[fol. 84]

CHESTER F. HENSON

Designation by Plaintiff

My name is Chester F. Henson. I reside at 4475 Cerritos Avenue, Long Beach. I have been a Chevrolet dealer since 1950. The name of my agency is Harbor Chevrolet Corporation, located in Long Beach. I have been a member of the defendant Losor Dealers Association since 1950, was elected president in November 1960, and was a director in 1961 and 1962.

In late January or early February 1961 the Losor Board of Directors made a decision to purchase a car through a

discount house or referral service. As far as I know, there hadn't been any absolute proof, such as the physical automobile itself presented to Chevrolet, that it could be purchased through a discount house. It was the belief of the board that cars were still being made available through discount houses and referral services.

The Board of Directors authorized Miss Evelyn Davis, our secretary at Losor, to purchase a car. She borrowed a tape recorder and went to the Gemco store near Anaheim and put a \$100 deposit on a new Chevrolet; Losor furnished the funds for the deposit. Miss Davis went back to Gemco [fol. 85] on a second occasion to purchase the car. She asked Mr. Johnson, an employee of Harbor Chevrolet, to accompany her. I think this was at some time after she had placed a deposit on the car. They went back to make the purchase with a cashier's check made out to Gemco for the car, which I believe Gemco refused. I believe Mr. Johnson had purchased the check from the Bank of America a few days before they went back to Gemco. The Losor check to the Bank of America is dated February 16, 1961. Gemco was a membership discount house, and Miss Davis used the membership card of a person named Palmer, and Mr. Johnson might have passed himself off as Mr. Palmer. I believe the papers that came with the car that was purchased were made out to the Palmers. I think they took delivery of that car at Schonlaw Chevrolet in Los Angeles, and the car was driven back to Harbor Chevrolet. (See Pltf. Exs. 138 and 183) I am sure we probably called the Zone and told them that we had the car and wanted to bring it up. Subsequently, Mr. Johnson and I took the car and papers to the Zone. Mr. O'Connor said to leave the papers and keys with him, and we told him the car was in the parking lot. Eddie Hopper, another Losor dealer from Garden Grove, was also present. He, too, had purchased a car, but his shopping was [fol. 86] not pursuant to the board of directors' meeting. It was on his own.

I brought the car down there for proof that the car had been purchased because I brought papers to him once before when I had purchased a car at another discount house and it didn't seem that that had much of an impression on him. I thought the car would have more impact on him. I thought

if he could see the physical automobile that he couldn't deny that this was going on.

Russell DeOrto was hired by the three defendant dealer associations to do some shopping at the discount houses. I told DeOrto his duties were to shop only for Chevrolets being sold through discount houses, and to make purchases through discount houses. He was to make a tape recording of the conversations and transactions wherever possible, so we could have it to play to the officials of Chevrolet. DeOrto was not told that the evidence he was gathering would be taken to Chevrolet.

I then told DeOrto I'd have to call him later to see if the deal could be firmed up because I didn't have authority to spend \$1000 per month. The money was coming from the three associations. I contacted my Losor board of directors [fol. 87] and got their approval, and notified the presidents of the other associations so they could get approval from their boards. Which they did. There was a mutual understanding that it would be a venture paid for equally by the three associations. DeOrto was hired on a monthly basis and was told to continue to shop until told to stop. I told DeOrto of a couple of discount houses to shop, and then, of course, the other dealers supplied other discount houses in their areas they would like to have shopped. The evidence obtained would be laid at the doorstep of Chevrolet. O'Connor knew we were doing this after the first one, and he didn't discourage me from doing it. It was necessary to make a number of shopping transactions to find out the scope and location of all this type of merchandising, and it was necessary to identify the dealership that furnished the car.

Around March 22, 1961, Mr. Glenn Roberts was employed to direct the activities of DeOrto, as Losor had served notice on the other two associations that it would not carry the burden of the investigation itself, and we thought it only fair that they share in the direction of this activity.

[fol. 88] Cross-designation by All Defendants

Shortly after June 28, 1960, in order to get proof to take to Mr. O'Connor that cars could be purchased through unauthorized outlets, I sent one of my salesmen to Cal Stores to make a deposit on a new Chevrolet. The order

was written there. He went to Cal Stores and told them he wanted to buy a new Chevrolet. I think it was an Impala. They did some dickering and an order was written up there. Cal Stores have a little enclosure there with a desk and telephone and some literature. I turned the order over to Mr. O'Connor. We were not gathering this evidence in response to a request from Mr. O'Connor, and I don't think he knew that we were gathering it.

I was of the opinion that the discount house automobile concessions were unauthorized sales outlets created through some sort of an association with Chevrolet dealers that was a violation of our Selling Agreement, because I had personal experience with that selling agreement and was requested to close a location that was just outside of my zone of influence and I thought, by George, if this applies to one Chevrolet dealer, it applies to all of them.

I didn't think there was any such thing in the General [fol. 89] Motors Corporation or Chevrolet Motor Division that meant that there was a set of double standards set up for dealers operating under the same Selling Agreement.

In June 1960, when a group of dealers who were members of Losor visited Mr. O'Connor and presented evidence regarding discount house selling of new Chevrolets, we were undertaking to submit proof that this was indeed going on—the retailing of new Chevrolet automobiles through an unauthorized location. We just didn't think that they thought it was taking place or that it was very prevalent or whether it was hearsay or gossip or whatnot. We took the attitude that we must submit proof to prove it was going on.

When we gave him the papers, he said that he would have these people contacted. He didn't say that he would do it himself. He didn't tell us when he would do it. He didn't tell us what he would say to them. As a matter of fact, he was pretty vague about the whole thing.

I didn't learn that he ever did have the dealers contacted. I heard that he was going to have it done but I never heard that he did. We tried to find out if he did but I think we got the same kind of vague runaround that [fol. 90] had been happening all along.

In the November 1960 meeting of Losor, I think Mr. Keown reported that there wasn't any progress being

made and I think that is the reason it was suggested that dealers write to Detroit. It was felt necessary to go beyond the zone's authority because there didn't seem to be much action otherwise. It looked like we were going to have to appeal to somebody to get something started on this proposition.

I wanted to show Mr. O'Connor the car purchased at Schonlaw Chevrolet through Gemco to prove to him that they were still violating their franchise. One of the dealers in Losor was to take the car and re-sell it—that was our original plan for getting the money back that we had laid out. In fact, the Board instructed Mrs. Davis to buy an eight-cylinder Impala sports model because it would be an easier car to sell.

When we went to Mr. O'Connor's office with our evidence, we were quite surprised to find out that the Zone already knew about the purchase that we had made and which was quite a surprise to Mr. Johnson and myself. Mr. O'Connor was well acquainted with the deal before we got there with it. He asked where the car was, and we said on the roof. [fol. 91] I didn't ask him what he was going to do, but it was my understanding or impression that the supplying dealer, Schonlaw, had called him and wanted to buy the car back. Mr. Schonlaw could have called him before or after the date I went to see O'Connor.

Additional Cross-designation by Defendants Losor Chevrolet Dealers Association, Dealers' Service, Inc., and Foothill Chevrolet Dealers Association

I was present at a Losor meeting on June 28, 1960, at the Captain's Inn in Long Beach. I remember being named to a committee that was to take proof to Mr. O'Connor at the Zone Office that cars could be purchased through unauthorized outlets, and also we classified them as illegal outlets. We endeavored to obtain proof and evidence that this practice was being carried on. I, for one, classified them as illegal outlets for this reason: That anyone assisting in the sale of an automobile or anyone that sells an automobile must be licensed to the dealer for which he works and no other dealer.—I had no information as to the licensing of these people on June 28, 1960.

I attended a meeting at Perino's on December 15, 1960.

It was attended by members of the boards of directors of the three defendant associations. I believe Mr. Pollard [fol. 92] asked us to meet. He didn't tell us the subject of the meeting—just requested us to meet. It was pretty much a diversified, garbled-up meeting. They talked about legislation, they talked about discount houses, they talked about various and sundry subjects; they talked about our licensing laws, our bonding laws, and perhaps it might be well if we would do something about maybe acquiring new cooperation from the D.M.V., or perhaps even new legislation would help. There was quite an argument about the legislation. I remember that. Mr. Shammas, one of those present, went on at quite some length about not wanting any more legislation, that he felt that the automobile dealer already had enough legislation—nationally and statewide.

We thought that presenting the actual proof of purchase to the General Motors organization would prove to them that their action of asking dealers not to sell through unauthorized outlets—prove to them it was still going on. We were in hopes that it would bring them alive and create some action.

We decided to hire DeOrto because we could not at Losor continue to spare our secretary to go out and shop for automobiles, and neither could I afford to have one of my employees spending his time to gather the evidence [fol. 93] that we felt that we needed to present to Chevrolet. Therefore I informed the board of directors that as far as I was concerned, we could no longer do this. We bought the one car. Therefore it was suggested that we hire somebody more professionally inclined in that line outside of our own employees. Consequently, Mr. Eddie Hopper, who was a Chevrolet dealer at Garden Grove at the time, called me and informed me that this man Russell DeOrto was in a business called, I believe, Efficiency Research, that he would like to send him over to see me for an interview, because my directors had asked me to check into the possibility of getting an auditing company or someone to carry out this investigation. I asked Mr. Hopper to send Mr. DeOrto over to my dealership. He told me to judge for myself whether Mr. DeOrto was qualified for the job. He told me the line of business the man was

in, which at this particular point I don't remember, I think some sort of sales research. When he arrived there I talked to him in the presence of Mr. Johnson, and he said that he could do this type of work, and he would be very glad to.

I didn't tell DeOrto how long the job was going to last because I thought it would continue until we had proper enough evidence to submit to Chevrolet and perhaps take [fol. 94] other action through licensing that might turn up. We didn't know what would turn up, we didn't know whether these people were licensed or not, we didn't know if they had an automobile dealer's license, and we were concerned as to whether they had a license that would permit them to sell Chevrolets for some of the Chevrolet dealers.

None of the three defendant associations sell automobiles. That is not the function of the Association.

The Associations have Chevrolet dealerships as their members—it is a series of dealerships. Our Dealer Selling Agreement is a printed form. Each of the dealers signs a similar contract that has the provision against opening an additional outlet. While there could be variation in the length of time the contracts run, they are otherwise substantially identical contracts. When I sign my contracts, I rely on the fact that the other dealers are taking on the same obligation as I am.

General Motors does not give any direction to any of the associations as to actions they should take. General Motors does not attend Association meetings.

[fol. 95] To my knowledge, at no time did I or any member of our Association, or the other two Associations, ever use any pressure or coercion on any dealer to refrain from selling through discount houses.

[fol. 96]

MARTIN POLLARD

Designation by Plaintiff

I am an automobile dealer. I have a financial interest in the following dealerships: Pollard-Ravenscroft Chevrolet, Van Nuys; Rancho Chevrolet, Reseda; Pioneer Oldsmobile, North Hollywood; Century Oldsmobile, Van Nuys;

Casa de Cadillac, Sherman Oaks. I formerly owned Martin Pollard Company, a Chevrolet dealership in North Hollywood (now Montgomery Chevrolet) and part of the Pollard-Carroll Company, a Chevrolet dealership in San Fernando. I have been a Chevrolet dealer for about 40 years. I was president of defendant Foothill Chevrolet Dealers Association from 1940 through 1961, and now am honorary president of that group.

I presided at a luncheon meeting at Perino's restaurant on December 15, 1960. The meeting was attended by officers and directors of Losor Chevrolet Dealers Association, Dealers' Service, Inc. and Foothill Chevrolet Dealers Association. I recall the following persons from the following associations were present at the meeting: Robert Erskine, Ed Colliau, Roger Sorenson, Glenn Roberts, and George (Cap) Reade, Jr. (all of Foothill); Chester Henson, Owen Keown, and "Red" Cone (all of Losor); Warren Biggs, Wilbur Newman, and Nicholas Shammas (all of DSI).

[fol. 97] Q. Who called that meeting, sir?

A. Well, I don't know whether I can answer that. I will have to tell you how it came about. I was called by Mr. Henson of the Losor dealers and he said they wished to get together with the other dealers, the other associations. I volunteered if he would get hold of the Los Angeles Dealers Association [Dealers' Service, Inc.], that we would host it at Perino's. So it wasn't really called by anyone. I called our people, and I imagine Henson called his people [from Losor], and somebody from the Los Angeles Motor Car Dealers [DSI] called their people. So we all had a hand in it. No one person called that meeting.

Joint meetings of the officers and directors of the three Chevrolet dealer associations were infrequent and were usually called specially, involving matters of some importance to the automobile business. The meeting at Perino's started at about 11:00 AM and lasted until about 1:30 PM:

Well, Mr. Henson and Mr. Cone and the representatives of Losor who were present discussed the trouble they were having and experience in Orange County with discount houses and referral business, and the very bad effect it was having on their business, and wanted [fol. 98] to know whether we were having, you know,

similar problems in our associations. And they brought us some reports of some activities that had taken place in Losor on their own initiative. I believe they reported that they had done some shopping on their own.

Well, we felt after listening to the report from the Losor that we ought to set up a committee comprised of members from these three associations, and that this committee should go out and study this over-all problem, how it was affecting the Chevrolet dealers, and come up with some sort of a recommendation, what to be done about it. There was nothing decided exactly what we were going to do, that is why the committee was set up, to report back at some subsequent time as to what they felt ought to be done.

I selected the committee and appointed "Cap" Reade as its chairman. I believe I told Reade that "it might be a good idea to check in with the (Chevrolet) zone office."

Following this luncheon meeting at Perino's on December 15, 1960 which was paid for by Foothill I wrote a letter to Robert O'Connor, Chevrolet Zone Manager in Los Angeles [fol. 99] about the meeting. (Pltf. Ex. 119)

Cross-Designation by All Defendants

When Mr. Henson called me on the telephone to tell me that the Losor dealers wished to meet with the other associations, he said that they had developed some information at Losor that they thought would be of mutual interest to the other two associations and which he thought we would like to hear about. I did not go into detail. We dealers, if one group wants to get together, we will show up. We don't get a big notice on it. So that was the basis of his conversation with me. The directors of the three Chevrolet dealers associations don't meet regularly, but we have met on several occasions to discuss various matters pertaining to our business. These meetings are infrequent and called for special purposes. While Mr. Henson might have related that the information Losor gathered pertained to discount house activities, I can't say from memory that he did.

At the meeting on December 15, Mr. Henson, Mr. Cone and the representatives from Losor who were present discussed the trouble and experience they were having in Orange County with discount houses and referral services and told the meeting the very bad effect it was having [fol. 100] on their business.

Q. You say these gentlemen told you about the bad effect it was having on their business. Did they say they were losing sales because of the discount houses?

A. Well, that would have been the inference. I mean if it was bad, they were losing sales, it was interfering with their business, and they didn't like the cars to be distributed in this method. They thought it was bad for Chevrolet's reputation. They talked about a lot of bad things about the discount houses.

They didn't talk so much about the price that they were being sold for because we didn't think the discount houses in all cases were selling cars for any less than dealers were. We were selling them pretty close ourselves. They just felt it was a bad way to have Chevrolets merchandised. It was putting in another middleman. There was the factory, then the dealer, and then the discount house, and then you finally got to the purchaser.

Among the topics discussed at the meeting was the dealer selling agreement. That had been discussed many times; not just at this meeting. This was kind of a general subject of conversation from sometime back. I don't remember [fol. 101] who brought it up, but I believe there was some discussion concerning the fact that they felt that selling in this way was a violation of the contract. There was some discussion on the phase of the contract that had to do with establishing unauthorized sales outlets in territories other than that which the dealers occupied themselves.

Nothing specific was decided at the meeting concerning what we were going to do. That is why the committee was set up—to report back at some subsequent time what they felt ought to be done. I appointed the committee and I appointed Mr. Reade as chairman. The committee was instructed to make a study of this problem and recommend what we could lawfully do to protect ourselves against what we felt was unfair competition. We didn't instruct the committee to do any specific thing, other than to go out

and find out and report back to us what they thought ought to be done about it. I think I did say to Mr. Reade that it might be a good idea to check in with the zone office. As a rule, the dealers always sort of keep the zone office in some sort of contact with anything that we might be doing that affected them. They had an interest in this, we felt. I didn't tell Mr. Reade what to say at the zone office. I just told him that he ought to check in with the zone office.

[fol. 102] Previously I had talked to Mr. O'Connor several times on the phone and had brought this question up.

Q. You talked with him on the phone?

A. Yes, sir.

Q. Did you call him specifically to bring this to his attention?

A. When I called Mr. O'Connor up I usually had three or four things on my mind to talk about. I probably covered those, and we were always bringing this sort of pressure to the attention of Chevrolet, that we felt this was a violation and we would like some help.

Q. What did you expect Chevrolet to do about it?

A. Well, it was a violation of the contract. You know the contract is kind of ground rules by which all of us dealers had operated under for years, and this was one portion of it. As long as the rest of us were playing the game, we thought three or four others shouldn't be allowed to cheat on the rest of us and cheat on their franchise.

Q. You say you thought it was a violation of the contract, sir?

A. Thought it? I knew it was.

[fol. 103] As to how I knew it to be a violation of the contract I can give you a very dramatic incident for this particular part of the contract was brought home very close to my heart. Before 1948 or '49 I did not belong to the metropolitan dealers group. The dealers in the Valley were outside of that group, and this thing didn't apply outside of the metropolitan group. I had established—I had bought a corner lot in Studio City and I had a building on there. I had parts service, I had sales service, and I had mechanical service. Our agency in the Valley was brought into the metropolitan group and the zone office came to me and explained to me that we would have to shut that down, and we did, on the basis that it was a violation. And it

cost me thousands of dollars, so I have known about this a long time.

Q. That was your own building in Studio City?

A. Yes, sir.

Q. Operated by your own personnel?

A. That's right.

Q. Stocked with your own parts?

A. Yes. It had our name on it.

Q. You advertised that that was a place of business of Martin Pollard, Inc?

A. We just called it Studio City Branch.

[fol. 104] What I regarded as a violation of the franchise agreement was that a dealer was setting up a sales outlet in the metropolitan area other than his own place of business, and that is what is provided in the contract and forbidden.

Q. All I am asking, Mr. Pollard, is whether or not you people considered whether at the discount house there was a sign up there which bore the name of a Chevrolet dealer, or whether there was no sign—was that a thing you considered?

A. It wouldn't have made any difference to us whether this was a clandestine way of selling cars, or whether it was out in the open, it was still a violation as far as we were concerned.

The threat that discount house selling posed to me as a Chevrolet dealer in Reseda, Van Nuys or North Hollywood was that it was an extra outlet for the sale of automobiles. And the more outlets, the more people that could sell automobiles in any give locality, it just cuts the pie thinner. Anyone can understand that. The more outlets there are for so many automobiles sold, it just sort of dilutes the whole market. As profits are pretty well dependent on the number of cars you sell, the volume of cars, the existence of discount houses dilutes those profits. The more outlets [fol. 105] or the more places people can buy a product in a given area, it dilutes the amount of products that can be sold by any one outlet. That's one of the reasons I objected to discount houses. But on top of all that, I feel that there are ground rules that I am asked to live up to, and do live up to as a gentleman, and they should be lived up to by other dealers that have signed the same contract.

I don't see why some other dealer should get some special privilege that I don't have.

Sometime in the latter part of February, 1961, I, along with six or seven other dealers, met with Mr. O'Connor in the zone office. I think the conversation had to do with a car that had been purchased through one of the investigators and what to do with the car, how we are to dispose of it and that sort of thing. We kicked around whether one of the Associations would take the (resale) check or what should be done with the check, and then I said, I suggested that they send it to Mr. Cameron Aikens because he was an attorney for the L.F.D. and had other funds of the dealers, and that was agreed on where we would send the check. I did not notify Mr. Aikens that the check was coming. I intended to call him up afterwards but I forgot entirely about it. To my knowledge there was no suggestion made by anyone that the check be made out to General Motors Corporation. The reason the dealers didn't want [fol. 106] the checks made out to the Associations was because they felt that it was just an odd matter, where they didn't want to get mixed up in their books from the standpoint of bookkeeping. Remember, our treasurers are men who volunteer their time. They are dealers. They don't get paid for this. So we didn't want to bother them with this. We just sent it to a man who was getting paid for doing a little work for us.

Additional Cross-Designation by Defendants Losor Chevrolet Dealers Association, Dealers' Service, Inc. and Foothill Chevrolet Dealers Association

There were several reasons we wanted more evidence—to see what other dealers were engaged in this, and then we also had another thing up our sleeve. We also wanted to get some information to use for legislative matters, which had nothing to do with Chevrolet. And we did get some. Because we had a Bill—Assembly Bill 714 before the California Assembly at this time. It is called the Automobile Dealers Commission Bill. It was introduced on the 17th day of January 1961, and we needed more information to show what was going on.

We had to sell that Bill to the Assemblymen up there, and we had to show as reasons abuses that the public

was suffering because of poor merchandising practices, not only of discount houses, but dealers, and a lot of [fol. 107] other people in the industry.

Regarding the letter identified as Pltf. Ex. 119, wherein I stated, "I feel now that the long wait and indecision is at an end," I was referring to the last couple of years. I am more than a Chevrolet leader. I was chairman of the dealers of California Legislative Committee and we had been working on and trying to get dealers behind a good legislative program, so that was part of the thing that I was talking about, that the dealers were now exercised enough to back up their legislative committee, come up to Sacramento, take their time, spend their money and testify before the different sub-committees up there.

Regarding our shopping activities, we had agreed—the association agreed—to carry on this purchase program to get more definite information to take to Chevrolet Motor Company so they would know, so that it would be undisputable what was going on, who was selling cars through the discount house and what the names of the dealers were. . . . The objectives of the shopping service were two-fold. I think we were trying to uncover all the various methods that might be used by discount houses in a relationship with dealers, as well as finding out who the dealers were that were carrying on sales through discount houses.

[fol. 108] Q. You were trying to clarify which dealers were involved in discount house merchandising, as well as the various methods by which the cars got to the customer, to or through the discount house?

A. I think that's what we were trying to nail down.

Q. Those were the principal objectives of the shopping activities?

A. I said it was one of the objectives.

At a meeting in early March 1961, at Perino's, we agreed to put up \$5,000.00, and each association agreed to do the same, for shopping and other matters of interest, that we were going to use on our legislation in Sacramento . . . We had been assembling information for the legislative program a long time; not the Foothill Chevrolet or Losor, but through the Los Angeles Motor Car Dealers Association and the Southern California Motor Car Dealers Association, both of which groups encompass all kinds of car

dealers including foreign cars. It is our practice that if we take any legislation to Sacramento, that we do it in the name of the Los Angeles Motor Car Dealers and the Southern California Motor Car Dealers Associations, not Foothill, not just one group of Chevrolet dealers, but representing the entire industry. I am chairman of the Legislative Committee of the Southern California Motor Car Dealers Association, which group represent about 80 per [fol. 109] cent of the dealers in this area.

We were not going to Sacramento to attack the discount houses as such; we were going to try to get such legislation through that we could have better control over the discount houses by the State of California . . . We were going to try to have a Commission formed, like they have of the insurance people, so that we could control bad business practices.

The reason we took the legislation up was that we sent questionnaires out to all the dealers in the State of California and get them to vote whether they wanted us to take this legislation up, and because it was a majority vote we did. The activating heads of the proposal to establish a Motor Vehicle Commission and a commissioner to regulate the automobile industry were the Southern California Motor Car Dealers Association and the Los Angeles Motor Car Dealers Association, and the respective members of those groups, as distinct from Losor, Foothill, and Dealers' Service. You must remember that all these dealers in Foothill, Dealers' Service, and Losor were also members of the Southern California Motor Car Dealers Association and were supporting anything that they (the Associations) were doing.

We were going to put in that Act, and we did put in the Act, and this Act did pass the Assembly in 1961, that [fol. 110] every dealer had to be licensed, and every salesman had to be licensed, and under the regulations that we were writing into this Act a discount house could not do business, because they were not an automotive place of business.

I discussed the subject of enforcing the dealer licensing law with Mr. Genzer of the Los Angeles office, and with Mr. McCarthy, who at that time was head of the Motor Vehicle Department. The Motor Vehicle Department told the dealers that they would be glad to have us assist them

in digging up the various infractions of the law and reporting same to them.

One reason we were proposing new legislation was to take the place of and strengthen the approach of the existing law. There was to be a Motor Vehicle Commission. It would be a part of the Motor Vehicle Department, but it would be in charge of enforcement, and in charge of putting out dealers' licenses and salesmen's licenses, and all of that . . . The Bill was passed by the Assembly but was not enacted at the session of the legislature as the Senate referred it for further study . . . We expect to put the Bill in again with some changes in it.

Reply Designation by Plaintiff

Q. When we asked you before the grand jury whether you thought it was wrong for other dealers to sell to [fol. 111] discount houses, why didn't you say at that time that you thought it violated the franchise agreement?

A. Well, sir, when you appear before one jury, and then six months later questions are asked differently, you don't quite give precisely the same answers on the thoughts you had in your mind.

Q. Mr. Pollard, in all the time you testified before the grand jury, 40 pages, did you once there before that body mention that selling through discount houses was in your judgment a violation of the franchise agreement?

I will turn the transcript over to the defendants if they can find any reference to that.

A. You don't have to do that. I don't think I did, because I don't think that was a question brought up, or you asked me any question that would have brought that out from me.

Q. Didn't we just ask you, "Did you presume it was wrong for other dealers to sell to discount houses?" and you answered, "Well, I think so. I think that has been in the minds of a lot of dealers for a long, long time, that it was wrong, there was no profit, the dealers couldn't make any profit in it, and there was a certain amount of annoyance that came from it, customer "dissatisfaction, [fol. 112] which we didn't like as an overall body"?

A. Are you asking me—

Q. There is no mention there about it being wrong

because there was any violation of the franchise agreement, sir?

A. I didn't try to mention all the things that were wrong; I just mentioned some of the things that were wrong.

Q. This morning you mentioned the franchise agreement a half a dozen or more times. Today you think it is very wrong, don't you?

A. It isn't any more wrong today than it was then. I just didn't bring the thing into my testimony, that is the only difference.

Q. Where you hiding it from somebody at that time?

A. Sir, I was not hiding it from anyone.

Q. Isn't it a fact that the alleged violation of this Dealer Selling Agreement is an afterthought which was conceived after this indictment was returned by the grand jury?

A. I think that was talked about as long ago—before the meeting of December 15th, we talked about that as one of the methods which we might be able to use to get these dealers to comply.

[fol. 113] Q. You failed to mention a single time in testifying before the Grand Jury, that you thought this (discount house) activity violated the dealer franchise. I ask you whether or not you can explain that failure to so testify.

A. I think I have already explained it once. When you are testifying and you are talking about a situation, it is not possible that any human being is going to mention all the things that are wrong, you just mention part of the things that are wrong.

[fol. 114]

LAWRENCE H. AVERILL

Designation by Plaintiff

My name is Lawrence H. Averill. I live at 1532 Tottenham Road, Birmingham, Michigan. My present position is General Sales Manager, Chevrolet Motor Division, the position formerly occupied by Kenneth Staley during the time in question here. In about June 1960 I was appointed Executive Assistant General Sales Manager of Chevrolet. My duties were working with Mr. Staley and the five Assistant General Sales Managers. I have been with Chevrolet since 1929.

The situation in connection with the sale of Chevrolets through discount houses and referral services in Southern California first came to my attention when the wires or letters started coming in, in quite some volume, which I would estimate possibly along in November 1960.

I believe I discussed with Mr. Mays (Assistant General Sales Manager in charge of the West) whether or not this matter had reached such proportions that the Central Office wished to review the entire matter possibly with the legal department. The substance of our discussion was that it is our policy when wires and letters come in, to answer them as quickly as possible. And inasmuch as here was something that was considered very serious and was [fol. 115] spread to the Corporation, as well as the Division, that we should check with the legal department. We asked the legal department for guidance and help in replying to these letters and to assist in the analysis of this whole program and give us guidance.

On December 14, 1960, we had a regional managers' meeting in Detroit attended by Mr. Staley, the assistant general sales manager, I believe all our regional managers, and I would say probably most of our Central Office department heads. Mr. Cash, Pacific Coast regional manager, was present and I was present. The topic of discount houses was discussed. This discussion was very short in relation to the other matters we discussed. It was to acquaint the Regional Managers with the scope of this activity, and in a broad sense the two types that we basically knew about, and the deep concern that it had brought about among the salesmen and dealers in that area, that we literally received dozens and dozens of letters and wires, and we were very much concerned about the possibility of losing some of our salesmen. There was a morale problem, and we were very much concerned with what this type of program could do to the good will of our product, and the standing, reputation of our own dealers, and the effects it could have on our franchise system. And that this [fol. 116] matter had been referred to the General Motors Sales Section; that we were waiting for their position and decision. As I recall, we received it that evening. Following this meeting I talked to Mr. Cash about the subject of discount houses in the Southern California area. I had been asked that we handle the follow-up and contacts with

dealers in regard to the Staley letter (Pltf. Ex. 121) as early as possible. I said to Mr. Cash, number one, that this letter was forthcoming; number two, that we were to make follow-up of this letter with all dealers in the Los Angeles Zone; number three, that these follow-ups were to be made as quickly as possible and at management level; fourth, Mr. Cash, having been the Zone Manager here in Los Angeles, I felt that he could be of material help, because, here was a lot of dealers to be contacted quickly—help with the Zone in a job breakdown.

I no doubt discussed with Mr. Cash the possibility of his contacting as many of the dealers as he could who were selling to the discount houses, giving consideration to geography and mileage and time. I instructed Mr. Cash to get together with Mr. O'Connor and the city managers, and possibly the Assistant Zone Manager, and go into a job breakdown to make contacts as quickly as possible with substantially all the dealers in the Los Angeles Zone after [fol. 117] the dealers had received the Staley letter (Pltf. Ex. 121), and to sit down and read this letter and discuss it with him. Mr. Cash was to personally contact as many as were selling through discount houses as he could, and at the same approximate time Mr. O'Connor and the Assistant Zone Manager or City Manager were to contact the rest.

I instructed Mr. Cash to meet with the dealers because I felt his long acquaintance and his position would lend importance to our position in this matter, and would lend emphasis to those dealers, of our concern. I hoped that he would be more effective than Mr. O'Connor, or the City Managers, or the Assistant Zone Manager in selling the position of the Corporation and Chevrolet that dealers should not sell through discount houses and referral services. I asked Mr. Cash to read this letter with the dealers and discuss it, and ask the dealer to read it to his sales people.

Q. Did you designate the other Regional Managers to meet with dealers on the same basis as you designated Mr. Cash?

A. They were not involved in the same situation, so I talked with no other Regional Managers on that. The

problem at hand was the letters and wires we had received and were laying there.

[fol. 118] Q. From Southern California?

A. In the Los Angeles zone, Southern California.

Cross-designation by All Defendants

I have been closely associated with the growth of the motor car industry in the course of my career. My dad was associated with a firm which had a Buick, Oakland, Essex and GMC Truck Agency. After I graduated from the University of Vermont I went to work for Delaney Chevrolet, a Chevrolet dealer in Hartford, Connecticut. I was a retail salesman there until a year later when I opened up Averill Chevrolet Company, a franchised Chevrolet dealership in East Hartford. I stayed there until March 1929 when I went to work for Chevrolet Motor Division. My first position with General Motors was what they call a factory representative. I have been in car distribution and organization ever since. In 1931, possibly May, I was made Zone Car Distributor and Office Manager at our Tarrytown office in New York.

I believe late in 1932 I was transferred from the Zone to what was called the Atlantic Coast Region where I was on car distribution and organization work.

In January of 1934 I was transferred to Chevrolet Central Office as Assistant Manager of the Market Analysis [fol. 119] Department, as it was called then.

Approximately in March that same year, I was made manager of the Consumer to Factory Department and working directly with the General Sales Manager, Mr. W. E. Holler.

Possibly in October 1937, I was made Zone Manager of Chevrolet at Columbia, South Carolina and, in March 1938, Zone Manager of Chevrolet in Jacksonville, Florida.

Sometime in December 1938, I was made Zone Manager at Syracuse, New York.

In the fall of 1940, I was made Zone Manager of the Pittsburgh Zone located in Pittsburgh, Pennsylvania.

On January 1, 1945, I was made Assistant Regional Manager of what they call the Southeast Region, in Atlanta, Georgia.

In possibly the late spring of 1948, I was made Assistant

Regional Manager of the Eastern Region, located in Washington, D. C.

In 1950, possibly in May, I was made Manager of the Metropolitan City Department at our Central Office in Detroit.

I believe in August or September 1954, I was made National Fleet Manager for Chevrolet, still in Central Office in Detroit.

[fol. 120] In 1955, the latter part of August or early September, I was made Regional Manager of the Eastern Region, located in Washington, D. C.

In May 1959, I was appointed Assistant General Sales Manager, Chevrolet, in the Western Half.

In September of 1959, I was made Assistant Sales Manager in charge of the Eastern Half.

I would say perhaps the first of June, 1960, I was appointed Executive Assistant General Sales Manager of Chevrolet; and September 1, 1962, General Sales Manager.

Q. In connection with your career at General Motors, and before, did you become familiar with the progress of the Chevrolet merchandising plan?

A. Well, I had lived with it. Yes, sir, I did.

My duties as Executive Assistant General Sales Manager involved working with Mr. Staley and each of the five Assistant General Sales Managers, which would reach into every department of the Sales Department in Central Office. That assignment also brought me in frequent contact with other departments, other than Chevrolet, which would involve manufacturing, accounting, auditing. When Mr. Staley was not present, I was in charge of the operation.

[fol. 121] With the stock market crash in 1929, in 1931 and '32 the automobile market took a terrific drop. I think it was brought out at that time that when we hit a recession the automobile market dropped deeper and heavier than many other goods; so as a result there was rather a high dealer mortality in many sections, following the crash of 1929. Chevrolet, I don't believe, sustained many losses, as I think back on the figures, but I do know there were very substantial losses in the dealer body as a whole, industry wide. So it was agreed that if we were going to build a strong dealer organization—someone who could be

out there to service our product in good times and bad—that there had to be a scientific plan of placement of dealers.

My first assignment in coming in from New York to Chevrolet's Central Office, in January 1934, was to join a group of men in making studies of markets. I worked with the metropolitan group. There was another group working in the rural areas, building a library up on registrations, on sales, on markets across the country. I well remember at that time Mr. Staley who was working up the financial information on the dealers in these same areas.

From these studies, and from the history of our experiences in Chevrolet and in the industry, there was developed [fol. 122] the Quality Dealer Program. The principle of the Quality Dealer Program was to have outlets convenient to the customer, but in size and in numbers to be in keeping with a weighted potential market average. That weighted potential market average was given the name "Planning Potential." Out of this was developed survey crews which went across the country as fast as they could; —and out of it was born our merchandising marketing program that we have today. That program was to have a sufficient number of outlets that would conveniently serve the customers, that would not destroy competition between the dealers themselves, but would bring a sufficient amount of stability into our operation where these dealers over a given cycle could enjoy and expect to enjoy, or had the opportunity to enjoy a reasonable return on their investment.

The average dealer does not make money in his service, or even in his service and parts departments combined, so he must look to gross profits and profits from new cars to survive. That is still true today.

Where there are too many dealers in a given market, that's where the failures took place. Those were the communities that suffered—where there were too many dealers, because through these additional outlets and the number [fol. 123] of outlets, the market was diluted to the point that the dealers could not get enough profit coming in from new cars to maintain their place of business.

So that we feel that with our quality dealer program and our plan of merchandising and marketing, it is very

vital to our being able to not only sell our cars but to establish places of business that will maintain those cars.

In the setup of our dealers, we made no attempt to eliminate competition among our dealers.

Our program, from its very inception, recognized that a man could live in one location in a city, he could work in another location of the city, perhaps his household would shop in a third location and he may go to church in a fourth location. But we also knew that if a dealer properly served these owners in the broad sense, he could expect a reasonably high percentage of the people living in a reasonable radius of his place of business to buy from their dealer. We found that people would travel quite some distances on price, and that will always be true to some extent, but they will also evaluate service and if a dealer is giving good service and he is competitive, the majority of the people that make the decision to buy a Chevrolet will buy from him. But he must be competitive. If he isn't [fol. 124] competitive, then the people will go to another dealer and he will eliminate himself, or we hope find out his weaknesses and strengthen his operation to where he can be competitive.

Our owner research studies show that how the car performs in the hands of the owner is a tremendous factor in whether he buys that car again, and also of what he says to his neighbors, relatives and his friends.

We learned a long time ago that you not only must design a product that is competitively priced and will meet the needs, the wants, the desires of the buyer, but you must support that product with good service. We are selling a complicated piece of machinery. Each year it becomes more complicated, and we recognized that we were going to bring into play in our product the things that were being developed in our research laboratory. We couldn't bring them into play until we had a dealer organization out there that had the tools, the facilities, the trained mechanics or technicians that could fix our automobile if there was a failure.

If we were going to progress and become competitive, we had to have out there a dealer organization that had sufficient proper profit opportunity where they could supply

[fol. 125] facilities, could stock parts, purchase special tools and have trained technicians.

Service is a very vital thing, not only from the standpoint of having a car that is operative, but there is also a very serious safety factor, because if a car is not properly serviced and not properly maintained, it becomes a weapon. No time or effort is spared on the part of Chevrolet or General Motors, with training centers located across this country, to train our people to properly serve owners.

I recognized; when these letters complaining of discount house activities in the Los Angeles area came in, that here was a situation that was an industry problem and certainly a General Motors problem. Shortly after the receipt of these letters the whole activity was given quite a bit of visibility through the trade papers, and whenever we have an operating problem that reaches into all the Divisions of General Motors, it is referred to the Sales Section of General Motors and it becomes more or less a policy matter. The Sales Section at that time was directly under Mr. Crawford, who in turn reported to Mr. Roche.

Mr. Staley and I were very much concerned about the [fol. 126] whole matter. Because we felt that here was a serious challenge to our method of operation, and here, as I recall, were some salesmen threatening to leave the dealership and the dealers, themselves, very disturbed, which doesn't lend itself to good merchandising.

I knew from the wires and letters and from what information I had gleaned that here was an operation that could very seriously upset our entire plan of merchandising, which would be very serious to Chevrolet.

Along in December of 1960, Mr. Staley was very concerned, the same as the rest of us were, on the delay and the time that it was taking to get guidance and advice from the Corporation and our Legal Department. We had these many letters and wires, and it has been our practice and policy through the years to try to answer all correspondence from our dealers in a prompt way, and weeks had passed; and we were concerned in not getting letters back to these dealers.

With respect to Mr. Staley's concern, here is a man that had worked day and night and spent about a million dollars in developing an owner relations program, and work-

ing and doing everything we could to lift the good will of our product with our customers, with our owners. Here was something that he felt, and we did, too, could destroy [fol. 127] the very thing we had been working on. And through this program we had raised the owner loyalty to a new all-time high in Chevrolet, second only to Cadillac in the industry, and we knew something like this, if it continued, could destroy it, and were concerned about it.

Q. How did you know that, Mr. Averill?

A. How do I know that?

Q. Yes.

A. I know that from over 30 years living and working in this business.

Q. Do you mean it was your opinion based on the facts you then knew that if discount house merchandising continued, there would be some sort of calamity?

A. I recognized certain basic factors and basic things in there that I had lived through in this business in years gone by, a similarity that would produce the same effect, the same result. I didn't have to read it out of a book, Mr. Blecher; I was there, I lived it.

Q. What result are you talking about, sir?

A. I am talking about multiple outlets, too many outlets in a given market. I had seen the effects of that in every recession period we had, following World War I, following the stock market crash in '29, I saw it again in [fol. 128] '37 and '38. And where there were too many outlets in a community in relation to the market, I saw dealers fail and go out of business.

Mr. Blecher, I had the opportunity in riding the field to visit many towns where there was no dealer following some of those periods, no dealer. Many times the one dealer left.

At one time I devoted many months in research and study of this very thing. When I was moved from New York to Detroit, made Assistant Manager of Market Analysis Department, my first assignment was to build a library and do research work on the relation of outlets to market in every metropolitan city in the United States.

I believe that a branch location under the Selling Agreement could be established in many different ways. When there is a location where people can go to and buy and be

told about Chevrolet, that is an outlet—under my interpretation of it. It may not be a part of the dealer's personally owned place of business, but if he has an arrangement with a wholesale house or a discount house, he has established an outlet. When a discount house is operating under an agreement with a Chevrolet dealer that makes another outlet for that dealer, an established outlet, be- [fol. 129] cause there is advertising there,—it is a place of business where someone can go in and buy a Chevrolet.

Q. Would you say then, it would be a Chevrolet Motor Division place of business?

A. I would say it would be a Chevrolet—an automobile merchant's place of business operating under an agreement with Chevrolet Motor Division.

At the Regional Managers' Meeting on December 14, 1960, no one gave a "report," as such, on discount houses, but it was a topic of discussion. This West Coast activity had become a topic of discussion and concern among most of the dealers across the country, so that we felt that it was very much in order to acquaint the Regional Managers with what was going on, and that we had asked General Motors to give us a direction as to it, and Mr. Staley, I know, mentioned at the time he was very much concerned with the time that had elapsed between receiving letters and wires from dealers and getting an answer out to them, and that he had hoped and been able to read to them General Motors' position in this matter at this meeting. The position was not available to us during the meeting itself, but, as I recall, in the evening a letter was brought down [fol. 130] from the Corporation and I believe Mr. Staley read the letter to the group.

I had previously been advised by the Sales Section that in this letter the Management was going to be asked to make contacts with all dealers and review this letter, and the contents in the letter. I had also been informed that this letter was not going to the sales managers or salesmen, that this letter would be directed to the dealers, and that the letter to the dealer would have to serve as the answer from General Motors or Chevrolet to the salesmen and sales managers.

I had also been asked that we handle the follow-up and contracts with dealers in regard to this letter as early as

possible. And I was very conscious of the number of dealers involved and the limited number of people that would be assigned to make these contacts. So in talking with Mr. Cash following the meeting my purpose was to give him as much advance notice as I could, and he helped our personnel organize to do this job, which was a big job.

I instructed Mr. Cash that when he was meeting with dealers who were selling through discount houses or referral services to read the Staley letter (Pltf. Ex. 121) with them. I wanted to make sure the dealer had read it. Sometimes, from experience, people are a little slow in [fol. 131] getting to their mail, and sometimes they study a letter and sometimes they just glance at it. We wanted to make certain that the dealer understood every line in that letter.

I had hoped that as a result of these conferences the dealer would understand just what is good basic business; what was good for the product; for his customers; for himself; for Chevrolet; for the industry; to discontinue that type of merchandising. But it was up to him to make his own decision, up to the dealer. I thought the letter pointed up very well to the dealer the seriousness of this type of merchandising, from a business standpoint and from a legal standpoint.

It is not relatively unusual for the Regional Manager to hold personal and private meetings with a Chevrolet dealer. I was a Regional Manager and very few weeks ever went by in my life as a Regional Manager that I didn't have contacts with dealers. We would talk about the whole business for I am interested in the market, I am interested in competition, I am interested in the rivalry he may be confronted with. I am anxious to know what the situation is—what we can do for him, to help sell more goods; are we taking care of him from the standpoint of product and distribution? Are our sales helps, our programs, our sales activities, our service programs fitting [fol. 132] his needs; what can we do to help him be a better dealer, sell more goods; build more good will and make some money doing it?

I told Mr. Cash to read the letter to them as submitted and prepared by the Corporation and to confine the discussions to the terms of that letter. I did not specifically

instruct Mr. Cash to tell the dealers with whom he met that they were violating their Dealer Selling Agreement. I felt the letter spoke for itself.

I believe the letter coupled with the provisions of their Selling Agreement would enable them to evaluate very well their own practices.

Q. What did you expect Mr. Cash to accomplish by this series of conferences with the dealers who were selling to discount houses that he was holding?

A. We were hoping that the dealers would see, in the contents of this letter, the dangers that existed to the good will of our product, their own community standing, their own position, their own business, and would want to discontinue doing business that way.

Q. Why did you trust to his judgment or evaluation? Why, if you really believed that he was violating the agreement, why didn't you tell him so?

A. Mr. Blecher, we try to sell our dealers and not tell our dealers. And we were following in this case the same [fol. 133] practice that we had followed for many years, and that was to go in and sit down and reason with our dealers, what was good business, what was the right thing to do, and then hope that they would do that of their own free will and accord. And if they didn't do that, then it was our responsibility to go in and sit down and reason again, and again, and again.

Q. Why do you have an agreement that is terminable for cause?

A. There is a length to the time, there is a length of patience and understanding, but we do not go in and wave our contract in front of the dealer. They are our friends, they are our outlets, they are our customers. We try to sit down with the dealer and reason out what is the right thing to do.

Q. Don't you think it is the right thing to do—don't you think it is fair and honest to tell them, "We think you are violating your Agreement"? Is there anything so horrendous about that? I didn't ask you to wave the contract in his face.

A. Mr. Blecher, on these initial contacts, with a situation involving a whole city, a whole zone, our approach would first be to go in and cover the situation as we saw

it and give him the thinking of General Motors, the thinking of Chevrolet. We didn't know all the particulars of [fol. 134] these arrangements that might exist with each individual dealer. So our initial contact was to go in and give him our position, our thinking, the reasoning back of the thing. Then hoping that he would sit down and of his own good reasoning and fairness decide what is the right thing to do. But it had to be his decision.

Q. And the dealer was to decide for himself on the basis of the letter and his Dealer Selling Agreement whether or not he would be violating the terms of the Dealer Selling Agreement?

A. In these initial contacts we left it up to the dealer to make his own decision.

Q. Who drafted the Dealer Selling Agreement, Mr. Averill?

A. The Dealer Selling Agreement, Mr. Blecher, has been hammered out over a period of many years. Chevrolet dealers have had, and General Motors dealers have had, an awful lot to do with the contents of that Agreement through their dealer committee system, through the General Motors President's Council, through their own reports in to us and recommendations, so our Agreement is a by-product of practical experience in working together with our dealers as team-mates, so that much of the Selling [fol. 135] Agreement today is contributions made to us through our dealers.

General Motors does not have a membership in any of the three defendant Dealer Associations. General Motors people are asked not to participate in Association affairs. General Motors does not have any part in the operation or control of any of these three Associations.

[fol. 136]

FRANCIS J. BRUDER

Designation by Plaintiff

My name is Francis J. Bruder. I live at 4566 Greenbush, Sherman Oaks, California.

Bruder Chevrolet is a corporation which has been operating as a Chevrolet dealership at 5950 Hollywood Boule-

vard, Hollywood, since its incorporation on September 1, 1957. The capital stock of Bruder Chevrolet has been owned by the Motors Holding Division of General Motors Corporation and me. Since about 1960, I have held the controlling stock interest. As of December 31, 1960, my stock interest was valued at \$125,000. At its incorporation, I was elected the President of Bruder Chevrolet by the Board of Directors. I manage the dealership and make the business decisions.

In the calendar year 1960, Bruder Chevrolet made a net profit of \$163.94 on an investment of over one-half million dollars.

Bruder Chevrolet buys its entire supply of cars from General Motors. Most of the orders Bruder Chevrolet places for cars follow an order taken from a customer for a specific model car.

[fol. 137] Bruder Chevrolet is a party to a dealer selling agreement with the Chevrolet Motor Division of General Motors. This agreement is sometimes referred to as a "franchise agreement."

Q. Mr. Bruder, will you tell us how you negotiated the agreement of November 1, 1960?

A. Mr. Blecher, I don't believe I remember how it was negotiated, how the agreement was negotiated. No more than I do any of them that I have ever signed.

You read it, you read the contract or you read the agreement and you sign it.

Q. That is as the letter says, you either accept the agreement or you reject it; is that right?

A. That's right. It is your prerogative.

Q. You cannot negotiate about changing any of the provisions or any of the language in it; is that right?

A. You don't, no, sir.

Q. So that Chevrolet submits the agreement to you and you either sign or cease to be a dealer?

A. Well, I wouldn't go that far as to say you cease to be a dealer. You sign it if you want it, if you want the contract; if you want the franchise, you sign it. It is well in bounds.

[fol. 138] You always read it first. Everything that you sign you read.

Q. Can you change what you read?

A. No, sir. I never have.

Q. So that there isn't any negotiation in connection with the execution of this agreement in the ordinary sense of the word "negotiation," is there?

A. I have never attempted to negotiate on it.

Bruder Chevrolet began doing business with Dealers Diversified Services, Inc. (hereinafter referred to as DDSI, but formerly known as Autoresco) in or about October 1957. The basis of this business relationship is set forth in Pltf. Ex. 149. Each succeeding year at about the time the new models were introduced, I renewed this business relationship with DDSI (See Pltf. Ex. 150 for the model year 1959; Pltf. Ex. 151 for the model year 1960; and Pltf. Ex. 152 for the model year 1961). I entered into these agreements each year to increase sales. I understood how the arrangement with DDSI would work, to wit: a potential customer would make inquiry of a DDSI representative at one of the Fedco stores in which DDSI operated and would be referred to see a specifically designated sales-[fol. 139] man at Bruder Chevrolet; my salesman would quote the potential customer a price, would evaluate the trade-in and do all those things he would ordinarily do if the customer had walked in off of the street.

Neither I nor Bruder Chevrolet owned any part of DDSI or Fedco; we had no employees at the DDSI or Fedco places of business; we had no telephone listing at the DDSI or Fedco locations; we had no cars on display there; we did not advertise that cars could be purchased from Bruder Chevrolet at any DDSI or Fedco location; we never furnished DDSI or Fedco with any literature on Chevrolets; we had no sign or banner bearing either Bruder Chevrolet's name or the Chevrolet name posted at a DDSI or Fedco location; we did not control any aspect of the DDSI or the Fedco business. Bruder Chevrolet paid DDSI \$50.00 for each car we sold to a DDSI referral. The price at which Bruder Chevrolet agreed to sell to DDSI referrals was based on the prevailing market price throughout Los Angeles on purchases of Chevrolets through discount houses and referral services; Bruder Chevrolet had to compete with other Chevrolet dealers price-wise in order to retain this business.

In the calendar year 1960 Bruder Chevrolet sold 1362 new Chevrolet automobiles and trucks; of this total Bruder Chevrolet sold about 250 cars and trucks to DDSI referrals; thus about 18% of our new car and truck sales in 1960 were to Fedco referrals. I regarded the DDSI business as being just as profitable as most of my non-referral retail business and more profitable than fleet business (volume sales to large commercial or governmental users such as Southern California Gas Company, the County of Los Angeles, etc.).

Q. Did you consider, in the year 1960, that you might be hurting your brother dealers by making these sales of 250 cars through Fedco?

A. Never thought of it.

Q. You were concerned about Bruder Chevrolet and trying to get it on the black side of the ledger, Mr. Bruder?

A. Always looking out for Bruder Chevrolet.

Q. That is Mr. Bruder's first concern, and should be, isn't it?

A. That's right.

In late December 1960 or very early in January 1961 I instructed the personnel at my dealership to discontinue selling automobiles to DDSI referrals. It was at that particular time all of the dealers selling to referrals had quit selling to referrals, the discount houses, so I went along with them and therefore I told Mr. Adams, who was [fol. 141] handling it, to shut it off. Just before issuing these instructions I met with Mr. Roy M. Cash, Regional Manager, Pacific Coast Region, Chevrolet Motor Division, whose offices are in Oakland, California. The meeting took place at the Los Angeles Zone Office of the Chevrolet Motor Division, located on Wilshire Boulevard, and was arranged via a telephone call to me from Max Young, a City Manager for the Los Angeles Zone.

No one but Mr. Cash and I were at the meeting. I cannot recall any time prior to this when I had occasion to meet privately with a Regional Manager of the Chevrolet Division. At the meeting Mr. Cash read me a portion of a letter that he had on his desk about discount house selling, how it would affect the overall operation of all dealers nationally. I concurred that these things were right. Knowing how strongly he felt in the Region about disposing of

discount house and referral selling, I went along with it.

At the meeting with Mr. Cash, I told him that in a couple of days I would let him know whether I would discontinue selling through discount houses or through DDSI. A couple of days later I let him know by telephone. I told him I would stop selling through referral or discount house selling.

[fol. 142] Q. How do you know that Mr. Cash felt so strongly about it?

A. Well, I know Mr. Cash, and I have known him a long while, and when he talks to you you know what he means and he knows what you mean. We don't have to put it all on paper—never have.

Q. Did Mr. Cash tell you that your doing business with Fedco (DDSI) was a violation of the Dealer Selling Agreement?

A. I don't believe he ever told me that, no, sir.

Q. He did not tell you that?

A. I don't believe so. My recollection was that he didn't say that; I am not sure at this moment.

Q. Did he say in substance or effect, "The Chevrolet Motor Division thinks that this type of selling is a violation of your agreement"?

A. Well, it was stated in a portion—

Q. I asked you what he said, sir? I am not talking about the letter. I am asking what Mr. Cash said.

A. No. He did not say that. I believe that it was stated in the letter he read. Now, reading and saying it is almost the same thing.

[fol. 143] Q. Did Mr. Cash tell you that "I can't tell you what to do with your cars"?

A. He said that Chevrolet can't tell me what to do with—Chevrolet cannot tell me what to do with my cars after they are purchased by me.

Q. He told you that?

A. That is right.

Q. What did you understand, Mr. Bruder, was the purpose of Mr. Cash meeting with you in this way?

A. Well, just to bring to my attention or whoever else he talked to, if he did talk to anybody else, about the discount house and referral selling and operation.

Q. Did you understand the purpose to be that it would

be in your best interest to cease doing business with discount houses?

A. Well, I felt that way.

Q. Did you feel that that was the point that Cash was trying to make in the course of this meeting?

A. Well, we wouldn't have had discussion about it if he wasn't trying to make that point, I don't think.

[fol. 144] Q. And you understood that point at the time of the meeting, did you not?

A. I am sure that is the point we were counseling about, yes.

Q. So that the conference you had was a very important factor in making up your mind, was it not?

A. Probably helped. But it wasn't entirely the focal point.

I was thinking of ending my dealings with DDSI before the meeting with Mr. Cash because I wanted to get the business back on a legitimate basis and probably to make a little bit more money. Which has happened.

At the meeting with Mr. Cash I told him that if I was going to stop selling in this manner, I thought the rest of the dealers should stop also. Cash told me that he felt certain that the other dealers would discontinue dealing with discount houses and referral services as well. I left this meeting with the impression that every dealer who had been doing business with a discount house or referral service would soon quit. I knew that Warren Biggs Chevrolet was also doing business with DDSI, but I recall no conversation between Mr. Biggs and myself in respect to [fol. 145] whether Biggs was going to end his dealings with DDSI.

A letter (Pltf. Ex. 153) addressed to DDSI from Cecil Glover, General Manager of Bruder Chevrolet, dated January 3, 1961, was written pursuant to my instruction to Mr. Glover that he advise DDSI that we would accept no further referrals. The letter states, in part:

It is with regret that due to circumstances beyond our control, we will be unable to sell new Chevrolets on a referral basis, as outlined in our letter dated October 1, 1960.

In January 1961 I received a telephone call from Bruce Jermyn, one of the owners and the general manager of Courtesy Chevrolet. Jermyn told me that one of his people had shopped Bruder Chevrolet and that we were still honoring Fedco referrals. Jermyn asked me to come to his office. Mr. Adams (my salesman in charge of DDSI referrals) and I went to Courtesy Chevrolet. Jermyn and two other employees from Courtesy Chevrolet were present. We talked about referral business and that we all had decided to not do business on referrals and discount houses, and they had just checked on it and they found we had done it in one case. So I explained to Mr. Jermyn that I didn't [fol. 146] know about it, but certainly it was handled and it wouldn't happen again. That was enough for him, so we dropped it at that point.

After that time, Bruder Chevrolet did not honor any more DDSI (Fedco) referrals.

Cross-designation by All Defendants

When I entered into the agreement of October 30, 1957 with Autoresco, Pltf. Ex. 149, I was fairly well aware of what their physical facilities were and just how the referral system would operate. They had an office adjacent to the Fedco store on West Slauson, as I remember it, and they had a secretary, and I believe Mr. DuPuie was there. Customers would come in who were Fedco people, federal employees' credit people. At that time I believe they were the only people that were able to get a Fedco card and were able to get a referral through Autoresco. Later on most anybody could get a card. In 1957 the Fedco employees would come into that office and if they wanted to buy a Chevrolet they would be referred to one of the dealers that handled Chevrolets on a referral basis through Autoresco.

As to whether I felt that it was in my best interest to discontinue doing business with discount houses because Mr. Cash wanted it that way, I felt that it was in the [fol. 147] interests of everybody in Chevrolet including myself.

With respect to Pltf. Ex. 153 (Mr. Glover's letter of January 3, 1961 to DDSI stating, "It is with regret that

due to circumstances beyond our control, we will be unable to sell new Chevrolets on a referral basis, as outlined in our letter dated October 1, 1960"), I did not authorize Mr. Glover to send that letter. I told Mr. Glover to advise DDSI that we no longer were going to do any business and that is what he wrote.

Q. Mr. Bruder, what are the circumstances beyond your control which made you unable to continue selling on the basis of your October 1 agreement with Dealers Diversified Services?

A. Mr. Blecher, I just mentioned a little while ago that I told Mr. Glover to advise Dealers Service, and this is the letter he wrote. The "circumstances beyond our control" that he put in there, I don't know what he was referring to.

Q. Do you know of any reason at all why Mr. Glover says, "It is with regret that due to circumstances beyond our control, we will be unable to sell new Chevrolets on a referral basis"?

[fol. 148] A. I don't have any reason why he should write that in there. What he was thinking about, that is his—he used his own mind in this letter.

I just advised him to advise Dealers Service, Dealers Diversified Services.

Q. Do you know any facts, Mr. Bruder, in respect to your operation which would have justified Mr. Glover in saying to a business associate that he had to stop dealing "due to circumstances beyond our control"?

A. No facts.

Q. You don't know why Mr. Glover chose to use these words, you don't know that?

A. I don't know why he chose to use those words, but I told him to advise these people, and that should be all that is necessary. I run the dealership; that is a fact.

Q. Now, it says here, "It is with regret." Did you tell him to say that "We regret this"?

A. Mr. Blecher, I didn't tell him to say any of that.

Q. So that it was not, in fact, due to circumstances beyond your control that you did discontinue doing business with Fedco?

[fol. 149] A. The only thing I can say to that is the fact that I told the man, my general manager, to advise Dealers

Diversified Service we were no longer going to do business with them, and that was it, period.

Ninety per cent of the technicians (mechanics), as well as the Service Managers and shop foremen, employed by Bruder Chevrolet in its service department have attended the service school run by the Chevrolet Motor Division at the General Motors Training Center in Burbank, California. A new mechanic, whom we realize is a good man, is sent to this school as quickly as possible "because we want them to have all the knowledge we can about the Chevrolet products so that we can do a better job for our customers."

Additional Cross-designation by Defendants Losor Chevrolet Dealers Association, Dealers' Service, Inc., and Foothill Chevrolet Dealers Association

Dealers' Service, Inc. is an association of Chevrolet dealers. They have a trading bureau which Bruder Chevrolet has always used. We dealers trade all the time. Dealers' Service, Inc. also carries on certain advertising for the dealers. To my knowledge there was no blacklist or any differentiation made between dealer members of Dealers' Service who sold through discount houses and those who did not. At no time did Dealers' Service take any action or request that we discontinue selling through discount houses, and at no time were we deprived of any of the benefits or services of Dealers' Service. At the time Bruder Chevrolet was selling through discount houses I was elected a director of Dealers' Service.

[fol. 151]

WARREN BIGGS

Designation by Plaintiff

My name is Warren Biggs. I am president of Warren Biggs Chevrolet located at 205 South Vermont Avenue in Los Angeles. The company is wholly-owned by myself and the family. In 1960 I was vice president of Dealers' Service, Inc. and in 1961 I was president. In both years I was a director.

I first had occasion to do business with either discount houses or referral services in 1957. I first did business with

Fleet Sales Company under a business arrangement whereby we sent them a referral fee of \$50 for every customer they sent to us, to whom we sold a new car. We did not sell cars directly to Fleet Sales itself. They never took title to or possession of the cars. We dealt directly with the customer at our place of business. We did not have anybody at the Fleet Sales place of business to talk to customers. We discontinued this business sometime in early 1958, I believe. It would seem to me that we did business with them for almost a year.

Subsequently we did business under an arrangement with Dealers Diversified Services, Inc. (sometimes referred to as Fedco). We commenced doing business with them in approximately mid-1958. Mr. Blair called on me at my place [fol. 152] of business and told me he would like to apply for a job on our sales force. He told me he could bring with him the Fedco account and told me what it was. At that time Blair first related the mechanics of the referral system of Fedco, where they were and how they operated. He told me the approximate gross profit on which they wished to do business but he emphasized that it was approximate, that the arrangement was an informal arrangement to the extent that there were occasional variations from it which he would handle himself with the Dealers Diversified Services, Inc. people. I hired Mr. Blair on a commission basis, the same as our other salesmen.

There was no aspect of the business relationship between us that gave me any control whatsoever over the business premises of Dealers Diversified Services, Inc. I didn't control their operation in any way. I didn't advertise that cars could be purchased from Warren Biggs at the premises of Dealers Diversified Services, Inc.

During the period from June 1958 when we commenced doing business with Dealers Diversified Services, Inc. (See Pltf. Ex. 145, letter from Warren Biggs to Dealers Diversified Services, Inc.), and until the advent of the 1959 models, I was closely acquainted with the details and the amount of profit retained and the amount of commissions earned by Mr. Blair. We continued to sell the 1960 model Chevrolets to [fol. 153] customers referred by Dealers Diversified Services, Inc. under the terms of the agreement specified in Pltf. Ex. 146, a letter I wrote to Dealers Diversified Services, Inc. (See also Pltf. Ex. 147, a similar letter in regard

to the 1961 models). During this time I had frequent opportunity to examine the amount of profit being retained in those deals as far as my dealership was concerned. In 1960 about 25 per cent of my new car units were sold to people referred by Dealers Diversified Services, Inc.

On November 4, 1960 I had a golf game at Riviera Country Club with Mr. Owen Keown at his invitation. I had not played with him before nor have I since. He called and invited me by telephone and told me John Hessell and Robert O'Connor (Los Angeles Zone Manager for Chevrolet) would also be present. After the round of golf we discussed business matters. Mr. Keown, Mr. Hessell and Mr. O'Connor were present. Mr. Hessell brought the subject up. He is a close personal friend of mine. He was under the impression that the other Chevrolet dealers had an exaggerated impression of our general business in regard to referral houses, that we were doing business with more than one. And he wanted to give me an opportunity to correct that impression. I undertook to correct it by merely pointing out and describing our doing business with Dealers Diversified Services, Inc., and pointing out [fol. 154] that it was our only account of this nature. I didn't want the impression to be that we were doing a great deal of business with a great many of these organizations. I can't recall that Mr. O'Connor said anything. It is my impression that he just sat and listened.

I had occasion to write a letter to Mr. Keown concerning the subject of my discussion, dated November 5, 1960 (Pltf. Ex. 6). I think I sent copies to the other members of the foursome. This is the first time that I recall ever writing a letter to Mr. Keown or to any other competing Chevrolet dealers disclosing details of by business operations. I haven't written any similar letters since.

It is my impression that there was some discussion as to whether or not I would be willing to give up the account should it become increasingly apparent that my handling of this account was a part of this big problem that seemed to be getting bigger all the time.

I realized after the golf game that Mr. Keown must have set this meeting up in a calculated fashion, and that is why I wrote the letter. In the letter to Mr. Keown I made the statement that as long as this referral business was as profitable as I was representing to him it was, I wouldn't

surrender it without a concrete assurance that it wouldn't be picked up by another Chevrolet dealer.

[fol. 155] Throughout the approximately two and a half year period I was selling through Dealers Diversified Services, the Chevrolet organization was aware of the fact that we were doing business with them. Neither Robert Young (district manager at one time) nor Mr. Thompson (city manager) raised any objection to my doing business pursuant to my business relationship with Dealers Diversified Services, Inc. Nor did Mr. O'Connor. Nor did anybody at a higher level in the corporation.

We subsequently discontinued selling pursuant to business arrangements and understandings with Dealers Diversified Services, Inc. on December 31, 1960. I had no occasion to question or dispute the integrity of Dealers Diversified Services, Inc. or whether they were doing business on an honest basis. Nor did I have any dissatisfaction with the manner in which they performed their obligations under the business arrangements between us.

I had a conversation with Mr. Roy Cash (Chevrolet Regional Manager, Pacific Coast Region) immediately preceding the day on which I directed Mr. Blair that I was no longer interested in accepting referrals from Dealers Diversified Services, Inc. This conversation took place approximately during the week preceding the Saturday on which I gave the directions to Mr. Blair not to do any [fol. 156] more business with Dealers Diversified Services, Inc. I was called and invited to come over and meet with Mr. Cash at the Chevrolet Zone Office. I think it would have been my City Manager, Mr. Hawthorne who called me. I was not informed as to what the subject of the meeting would be. Just Mr. Cash and myself were present. The subject of this meeting was discount house activity. We had a very general conversation about discount house activity, and it was my impression that we were of a mind on the subject. I do seem to recollect that Mr. Cash and I discussed Mr. Stanley's letter (Pltf. Ex. 121). I don't recall that he had it before him and that we were in specifics, but I think we discussed it. The only discussion we had of my own account was my relating to him that I had already decided to get rid of it, and why. It was apparent from our conversation that he knew that I was currently

doing business with Dealers Diversified Services, Inc., and had been for some time.

Q. Did Mr. Cash discuss with you the question as to whether your conduct constituted a violation of the Dealer Selling Agreement?

A. We did not discuss my personal situation or business at all.

Q. Do you recall whether or not during your conversations with Mr. Cash you addressed yourself to the question of—the same subject, rather, as you had dealt with in your [fol. 157] letter to Mr. Keown, namely, that you were interested in getting some concrete assurance that if you dropped the account, that it wouldn't be picked up immediately by another Chevrolet dealer?

A. Not so much from the standpoint of getting concrete assurances as I did express to him my hope that he could counsel with other dealers who were of a different opinion and bring them around to our way of thinking, yes.

I think at the start of our conversation he had commented that he had had conversations with other dealers, but he certainly did indicate that, in line with our mutual opinion, he would attempt to counsel with and convince any dealers who had not as yet awakened to this problem that it was not good business to continue.

I told Mr. Cash that I was going to terminate my business relationship with Dealers Diversified Services, Inc.

Pltf. Ex. 148 is a letter dated February 9, 1961 from Warren Biggs to Dealers Diversified Services, Inc. This letter does not truthfully state the facts. In the first place we had no greatly increased overhead factors; and in the second place I knew perfectly well that we would not have to sell any 1961 Chevrolets to Dealers Diversified Services, Inc. at \$500 and \$600 over invoice.

[fol. 158] Cross-Designation by All Defendants

At the commencement of each model year our arrangement with Dealers Diversified Services, Inc. was acknowledged in the form of a letter sent to Dealers Diversified Services by myself. (Pltf. Exs. 145, 146, 147) These letters were always considered by me as a formality. They were

originally presented that way, and each year were thought about as an afterthought and pre-dated and sent along for their files. The letters are much more specific than our agreement. The figures—\$250 over actual invoice for a Chevrolet and \$300 over invoice for Corvettes—were of a very general nature—a sort of rule of thumb on which we were going to do business, and it was indicated to me that according to the necessities of the moment—which would be cleared with Dealers Diversified Services in all cases—that we would deviate from this arrangement. Blair stated to me that he would be in touch with Dealers Diversified Services and that, if the general agreement was deviated from, he would always keep them informed. He did not say that it was a requirement to clear with them in advance. We deviated from the figures many times.

From time to time representatives of Dealers Diversified Services, Inc., including Miss Joan Miller, would call up to check upon a transaction to see if we were adhering to our agreement. Her checking was to ascertain whether or not, in fact, we had kept within or were under the \$250 [fol. 159] maximum that was agreed upon—or if there was some reason for needing to hold more, in light of particular circumstances.

When we stopped doing business with Dealers Diversified Services I had forgotten all about the existence of a letter because it was so minor in my consideration. Some time after we stopped, Blair came to me and stated that because they still had a letter in their possession that we agreed to sell cars through them, that they were going to send referrals to us regardless of our telephone communication. That is the first time I thought about the letter. I held legal counsel or communion with myself, I had no lawyer on retainer at that time and I didn't contact a lawyer. I thought perhaps the reason they had raised this question was that they had intended to make some sort of a legal force to delive cars even though we didn't wish to. So I thought that I might handle it in accordance with the terms of the letter that I had given them, which stated at any time we wanted to raise the gross profit, we could do so in writing. So I just wrote them a letter which raised the gross profit enough so they wouldn't send us in more business, instead of writing them a letter, which perhaps

I should have done on December 31st, instead of telephoning them.

I had made up my mind to discontinue my relationship with Dealers Diversified Services, Inc. approximately 60 days prior to my meeting with Mr. Cash. About the time [fol. 160] I made that decision I had Mr. Frank Mack take Blair to lunch and sound him out as to his willingness to remain with us if we dropped the Dealers Diversified account. About that time I had made up my mind to cut it off at the end of the year. It seemed a good cut-off point to make it at the end of the year. I was not in a hurry, however, to disclose this decision to Blair, because I was hoping that I could devise some means of keeping him with me after we dropped the account, and I didn't want to upset him unnecessarily until I did come up with such a plan. Subsequently during that period I did develop such a plan for him.

My conversation with Mr. Keown and Mr. Hessell following our golf game on November 4, 1960 was a very pleasant, short conversation, casual conversation made during the time that we were having a refreshment or two after our golf game. I was not at all embarrassed by the fact that this conversation occurred in the presence of Mr. O'Connor. My only embarrassment was brought about by my realization which came about really afterwards, as I was thinking about the visit, that apparently there were a group of dealers who had classified me as doing a large percentage of my business through a sales device of this sort.

The letter that I wrote to Mr. Keown on November 5, 1960 (Pltf. Ex. 6) was a letter of justification. You must [fol. 161] bear in mind that for 17 or 18 years I have been handling a car of another make, and I was at this time, in terms of Chevrolet dealers, a comparatively new dealer. I had not become too well acquainted with most Chevrolet dealers, outside of those in my immediate area. And I think it is normal for one to take a certain pride in the conduct of his business and his business reputation among his fellow dealers, and I would not have been proud of having a reputation of being a discount house bell cow as I stated in my letter, because to me that would carry with it a connotation of being a weak merchandiser. So, there-

fore, I was trying to show (a) that we did only a small amount of our business with one referral house and that the business that we did was profitable business.

In my letter, I used the term "concrete assurance" far as the term concrete assurance was concerned, not talking about concrete assurance by anyone or agency of any sort; I was talking about concrete assurance by the general situation. It had become apparent that the problem was getting so bad that everybody was going to throw up their hands and say, "Let's get away from this." It would be at that time very obvious that no one else was going to pick up the account.

[fol. 162] By the end of 1960 discount house and repair service selling had grown very quickly into a very big problem. First of all it presented a problem from the point of service. Automobile service as related to maintenance distribution is very importantly premised upon a personal relationship between the customer and the dealer, or service in the dealer's organization. For example, in almost every case of a new car that we or any other dealer sells there are many things that we do that are above and beyond the terms as spelled out specifically in the warranty. Perhaps the use of a loan car for the convenience of the customer; perhaps a replacement of some vital part on a customer's car that isn't locally available. Recently we had a customer who had purchased a '63 car from us and the wiring harness on the top of the engine burned away completely through some failure. It was ascertained that our checking with Parts at Van Nuys—and this is an unusual situation—that owing to an unusual situation there was no wiring harness available on the West Coast and that subject wiring harness would have to come out of the plant in the East. It would have taken, we were informed, and did, about 10 days for this harness to come out to us. We removed a wiring harness from another automobile in our stock and immobilized that automobile for 10 days so that our customer could keep rolling.

Now, all that the warranty policy provided for [fol. 163] should do was to obtain a wiring harness for a Chevrolet through the regular parts channel as quickly as possible and put it on the car. So if this had not been something we wanted to do above and beyond the

warranty, we would hardly have tied up one of our very short new cars for a period of 10 days.

Now, that's what I mean by doing things for your own customers that a dealer simply from a realistic standpoint does not do for someone that is just a drop-in on warranty work. That type of thing I am referring to.

Now, those services, those extra services, are in almost 100 per cent of the cases obtainable only from the dealer who sold the car. Because this dealer or his organization is anxious to preserve the good will of his own customer, because about 50 per cent of our sales are sales that are sent to us by satisfied customers. So we have a very selfish motive in wanting to keep our customer as satisfied as possible. And, of course, also so that we can sell him another car when the time comes around again in several years.

If the customer returns for service with his warranty policy to a non-selling dealer, it is obvious that he receives only the cursory service that is required by the warranty policy. The dealer is not going to spend a lot of his own money and time in extra services for which he is not going [fol. 164] to be reimbursed on a car that is sold someplace else and he is just performing warranty work on it.

Based on my experience, my view was that later in 1960, because of the volume of cars that were sold through discount houses, there were many disgruntled customers who were receiving all the services that were spelled out in their service policies, but not all the services that they would have gotten if they had returned to the selling dealer for them. It was my view that this dissatisfaction with service was not directed against the discount house from whom they bought the car, and was not necessarily directed against the dealer who was performing the services for them wherever he was; it was directed against the product. So it was my view that product dissatisfaction was arising out of this situation, which had become sufficiently apparent so that all of the dealers were hearing a lot of it from customers and from people. And if it had gone on, I believe that it might have seriously affected the sales of Chevrolet automobiles.

In addition to the service problem, there was a sales problem. Automobile sales are usually engendered very

importantly on the basis of contact, not necessarily price. Discount houses were additional sources of contacts for customers in areas of influence completely unrelated to the different dealer locations wherever they might be. It was [fol. 165] very obvious to all of them, as it is very obvious strongly to me, after seeing how the problem grew and what it was resulting in, that I could not attempt to run a Chevrolet business as I am running it, with the investment that I have, if there were all around me points of contact for customers to buy Chevrolets in my area. Whether they bought them there, or not, was not the important point. The important point was that these locations were the basis of contact for the customer, and if there were a referral house three blocks away from me sending customers to a dealer 20 miles away from me, even though that dealer perhaps was not under-cutting me on price, the mere fact that the availability of the contact there for the customer was the important thing, and I am speaking now from the dealer standpoint. So those were the sales problems and the service problems that were encountered by the very rapid growth of these discount house outlets in late 1960.

While discount house selling certainly did not involve the problem from the standpoint of short term profitability, it did as to long term profitability. This sales device, as many other sales devices turn out to be, was difficult to resist because the dealer could look at X number of dollars profit that he was making on that deal or in that month or in that year. As the volume of that business grew, it became more obvious to me that I was defeating myself in the long run because in the first place I was destroying my sales [fol. 166] organization, and second I was putting myself in the middle of what could be a terrible squeeze, because in my case this referral house business had grown to 25 per cent of my volume in 1960, and the more it grew, the more I became aware of the fact that one day this account might be pulled out from under me and I would be left holding a sack that was only 75 per cent full, with no sales organization to refill it. So I was becoming too dependent upon them.

The reason I was concerned whether or not other Chevrolet dealers sold through discount houses was that all of the problems of product good will, service and sales, which I have mentioned would still exist.

General Motors Corporation does not have any control nor does it take part in the operation of Dealers' Service, Inc., the association of Chevrolet dealers of which I was president in 1961. On very rare occasions we might invite some representative to address us on some subject of interest, but that would be the only participation they would take. They don't direct or suggest what activities should be taken by the association.

Page 4 of the Dealer Financial Statement includes a departmental gross profit analysis which breaks down the [fol.167] dealer's gross profit among his various departments including the new car department. However, you cannot obtain the average gross profit over invoice from this analysis because the financial statement reflects several deductions from cost which artificially reduce the cost figure below our invoice cost, thus increasing the "gross profit." Such deductions include a substantial bonus which we receive from the factory as a result of holdover models. For example, in 1959 we had quite a large stock of 1959 models and we received back from the factory a retro-active bonus of 5% of the factory list price on all of the 1959 models we carried over. Also, we have a holdback of 1% of the factory list price of all of our cars during the year which we receive at the end of the year and which is a deduction from cost. We also had a last-chance clean-up activity bonus and a Corvair bonus.

Additional Cross-Designation by Defendants Losor Chevrolet Dealers Association, Dealers' Service, Inc. and Foothill Chevrolet Dealers Association

The primary purpose of the association (Dealers' Service, Inc.) is to facilitate dealer trading. Secondary purposes are to provide for collective advertising, representation in factory liaison, and to foster better acquaintance among the dealers.

The membership of the association is made up of the dealerships, not individuals.

[fol.168] The directors were elected by the members. The directors elected the officers.

I was elected both a director and officer during the time that I was actually selling through discount houses. Never since I've been a member has the association through any

of its officers or members suggested or requested that I stop selling through discount houses.

Q. At any time during the period that you have been a member of Dealers' Service, Inc., did that organization through any of its officers or any of its members suggest to you or request that you discontinue sales through discount houses?

A. No.

Q. Were any of the benefits or privileges, such as the use of the Trading Bureau, denied you by virtue of the fact that you were selling through discount houses?

A. No.

Q. Was any pressure of any kind exerted on you to request or cause you to discontinue such a practice?

A. No.

The activities of the associations in engaging Russell DeOrto to conduct shopping activities was for the purpose of turning over the information thus gathered to Mr. Roberts, who was in turn to take the information to the [fol. 169] State Legislature. This information was regarding the State licensing of the discount houses or referral services.

Mr. Roberts took such information to the State Legislature several times.

Reply Designation by Plaintiff

Q. Now, you testified that one of the reasons that you stopped doing business in the week following your conversation with Mr. Cash was the fact that you were worried about the morale in your sales organization, is that right?

A. Yes.

Q. And you have a number of salesmen employed at your place of business?

A. Yes, we do.

Q. By morale were you referring to the morale of your salesmen?

A. Yes.

Q. Do you know Mr. Yesko?

A. Yes, I do.

Q. Did he complain to you about referral sales were being made by Doc Blair?

A. He didn't have to complain to me. I know Yesko

well enough and worked with him long enough that from the expression on his face I can tell what he feels.

[fol.170] Q. Well, I didn't ask you what you can read from the expression on his face, and I can't cross examine you about that very well.

I want you to answer me yes or no whether he complained about it?

A. I can't recall having had a complaint from any salesman on the subject, Yesko or anyone else.

Q. You have a Mr. Pisano and to the best of your knowledge he did no complain?

A. I cannot recall having had a complaint from any salesman in my employ.

[fol.171]

WILLIAM H. SPOO, JR.

Designation by Plaintiff

My name is William N. Spoo. I reside at 575 East Verdugo, Burbank, California. I have been an automobile salesman since 1939. I was employed as a fleet manager at Citizens Chevrolet from September 1958 until March 28, 1961 when I was fired. I was rehired as a salesman in the used car department on July 5, 1962 and work there now.

During the period I was employed by Citizens Chevrolet from September 1958 until I was fired in March 1961, I had occasion to sell new Chevrolet automobiles pursuant to an agreement or understanding with a Robert Chico, who operated a new car department at several discount houses in the Southern California area. This agreement was entered into in the spring of 1959, when Chico was operating a new car department at the Certi-Bond Discount House in Torrance, and it provided that we would furnish cars to Mr. Chico to be registered directly to his customers and paid for on delivery at \$85 over dealer's invoice. This was the amount that Mr. Chico was responsible to Citizens Chevrolet for. Chico was the one who was going to pay Citizens Chevrolet for the cars. Subsequently, Chico opened up additional outlets at the Gemco Store in Anaheim, the Fore store in San Bernardino, the U-Disco [fol.172] store in Downey, the Big A in Canoga Park,

Martin's in Bakersfield, and the ABC Discount Store in Santa Ana, and until the end of 1960 Citizens Chevrolet supplied Chico with automobiles pursuant to this arrangement at each of the discount stores which he operated in the Southern California area.

In about the summer of 1959 I entered into an agreement or understanding on behalf of Citizens Chevrolet with Mr. Marvin Petty to supply him with automobiles on about the same basis as we had previously been supplying cars to Mr. Chico. The way in which we dealt with Mr. Chico and Mr. Petty was substantially the same during the entire period of time we had those dealings.

The discount house (Chico or Petty) negotiated the sale of the automobile to a specific customer, then the discount house ordered the car after it had reached an agreement with a customer in respect to the purchase. When the discount house ordered the car we were given the name of the person to whom it was going to be registered, and that was the name we listed on any invoices or documents. The customer paid the discount house, and the discount house, in turn, paid Citizens Chevrolet. We always looked to Chico and Petty for payment on the cars sold. The discount house in negotiating the price traditionally added some profit and the cost of doing business into this [fol. 173] price. This plus factor Citizens Chevrolet had nothing at all to do with. We had no control over the prices at which Chico or Petty delivered the cars to customers.

In late December 1960 or early January 1961 I had a talk with Mr. Newman, the owner of Citizens Chevrolet, during which he instructed me or told me to cut off all of the discount houses with which we were doing business. Mr. Newman had decided that it was unprofitable to do business with this source that we had set up. We had a problem at that time on payment on some of the automobiles and we had had a base agreement that it actually wasn't worth all the trouble. Sometime before this but at about the same time—late December or early January—Mr. Newman advised me that he had just returned from a meeting with Mr. Cash. He did not relate to me what happened in this meeting except for a little story that Mr. Cash told him.

Q. Will you tell us what Mr. Newman told you in respect to the conversation he had had with Mr. Cash?

A. He said that—he laughed and said that Mr. Cash had said that if his kid sassed him, he said, he couldn't do nothing about it, but—something about he could kick his teeth down his throat, or something like that. I don't know. [fol. 174] Q. Did Mr. Newman tell you that that is substantially what Mr. Cash had told to him, Mr. Newman, at the time they met?

A. He told me this story, yes. That's as far as I know, sir.

Q. Did he tell you whether or not Mr. Cash told that story to Mr. Newman at the time they had met?

A. Well, I presumed, because Mr. Newman had just returned from that meeting.

Q. At the time you talked with Mr. Newman he advised you that he had just returned from a meeting with Mr. Cash?

A. Yes, sir.

Q. And the story you have related with respect to kicking teeth down someone's throat relates as you understood to words used by Mr. Cash in his conversation with Mr. Newman?

A. That's correct.

Subsequent to my talk with Mr. Newman I did, in fact, stop doing business with Mr. Chico and Mr. Petty.

On February 3, 1961, I sold a new Chevrolet Corvair to a Shirlene Schoemann (Pltf. Ex. 167, invoice from the transaction), which I delivered through a contact of mine named Lex Jones who, to my knowledge, was not connected with [fol. 175] a discount house at the time this order was written. Also, on November 1, 1960, I had written an invoice for an automobile that was ordered through the Gemco Store in Anaheim for Bill or Mary Brooks (Pltf. Ex. 166). This transaction resulted from my business dealings with Mr. Chico. It was not until February 28 or March 1, 1961, about four months after the date of the invoice, that the Brooks' car was delivered. The original order was placed with Chevrolet, but due to custom equipment, being the first year of the Greenbriar (the model of car they had ordered), the order was delayed because of not being able to put this custom equipment on the car.

I had occasion to discuss both of these transactions with Mr. Newman on approximately February 27, 1961, in Mr. Newman's office. Mr. Max Young, a City Manager of Chevrolet Motor Division, was also present. I was called into the office on the Schoemann deal and asked by Mr. Newman why I delivered the car, and I told them that I had delivered it through one of my bird dogs. Mr. Newman said it had come to his attention that this deal was written by the Cal Stores discount house. I explained that I had understood that this Lex Jones had severed his relations with Cal Stores which I had known previously, and that I figured he was a bird dog now.

Q. During this conversation in respect to the Shirlene O. Schoemann transaction dated February 3, 1961, did Mr. Young say anything to you?

[fol. 176] A. The only thing Mr. Young said to me was that, "You have been told by Mr. Newman to quit doing business with discount houses."

Q. Did he ask you whether or not you knew that Mr. Jones was associated with the Cal Stores discount house?

A. Yes, sir.

Q. Did he give you any instructions in respect to continuing to deliver cars through discount houses?

A. He said Mr. Newman had instructed me to quit this type of business and that "Just quit it."

At that time I knew Mr. Young was City Manager of our area for Chevrolet Motor Division, and that in his capacity as City Manager he was responsible to Mr. O'Connor, the Zone Manager.

At that same time and place, with Mr. Young and Mr. Newman present, there was also a conversation with respect to the Brooks transaction. I went back to my office and brought back this deal and laid it on Mr. Newman's desk and explained to Newman and Young that it had originated with a discount house, and since Mr. Newman had told me to quit doing business with discount houses, I wanted to know what I would do with this deal. During the delay in delivery we had reordered this car making a retail deal out of it. I told the Brooks that I had no longer any affiliations with these other type of operations, and that if they [fol. 177] wanted this automobile reordered they would have to pay my price, which they agreed to. I brought all this up in the conversation with Newman and Young, and

was informed by Mr. Young to leave the deal there and to leave the office. I discussed the Brooks transactions with Newman the next day. I was told to straighten out the mess and in order to do this I was to take this car, personally, to Ernie Porter Chevrolet in Pasadena, with all the papers involved, and turn the deal over to Bill Vogan who is their general manager. Ernie Porter Chevrolet delivered the car to Mr. and Mrs. Brooks, and to my knowledge Citizens Chevrolet did not make any profit on this transaction, and I made no commission on it.

During the period of time I was employed by Citizens Chevrolet I never had occasion to discuss with any Chevrolet City Manager my conduct in respect to the persons to whom I could sell automobiles. Nor do I recall any other time during my employment by Citizens Chevrolet that I was instructed by Mr. Newman or any of my superiors to deliver a car to another dealer for delivery to a customer.

On March 25, 1961, I delivered a car to a person representing himself to be a G. R. Wolfe, who was sent to me by Mr. Arthur Diamond, a bird dog of mine. Three days later I had occasion to talk with Mr. Newman about this [fol. 178] transaction. He was highly perturbed. It seems that I had run into a professional shopper and Newman told me that he (Newman) had to buy that car back. Newman explained that Mr. Wolfe was a paid professional shopper and that tape recordings were made of my conversations with Mr. Wolfe and Mr. Diamond, which Mr. Newman heard downtown. I presume downtown would be down at the Chevrolet zone office. The amount of money Newman paid to buy the car back was more than the amount which appeared on the face of the Citizens Chevrolet invoice. I told Mr. Newman that whatever moneys Mr. Diamond made on that deal, I would see that it was returned to Citizens Chevrolet so that he wouldn't be out any money on the deal. This was done. It was at the conclusion of this talk with Newman that I was fired.

Around March 12, 1961, I had received a letter from Mr. Kenneth E. Staley (General Sales Manager, Chevrolet) commending me on the terrific job that I did in 1960 on the West Coast. (Pltf. Ex. 168) I was the number one fleet salesman for Chevrolet in the eleven western states.

Cross-Designation by All Defendants

Under the arrangement that Citizens Chevrolet had with Robert Chico, Citizens Chevrolet would hold title to the car and possession of the car while Chico went about his business finding a customer and negotiating a price to the customer.

[fol. 179] For example, let's suppose that the customer in Chico's place of business at Gemco, which is a good 40 miles from Citizens Chevrolet, is seeking an Impala coupe. We would have an Impala coupe on our lot up here at Citizens which we had purchased from the Chevrolet Division. Citizens owns that car. Now Chico or whoever is operating for him there at the Gemco store finds a customer and interests him in the purchase of an Impala coupe. Then Chico would quote a price to the customer.

Then Chico advises us that they have located a customer and satisfied him on the price. After being so advised by telephone, Citizens, which has title to that car, transfers it from itself to Chico's customer. In the sale of new automobiles, the authorized dealer like Citizens has a book of blank Report of Sales forms that it fills out in order to get a certificate of registration issued by the State of California. In order to get the title transferred from Citizens to Chico's customers, we filled out a Report of Sale and sent one copy to the State of California and pasted another on the windshield of the automobile. Chico then sends in and gets the car and takes it out to Anaheim at Gemco and delivers it to the customer.

In my business dealings with Mr. Robert Chico, my customer would be the person to whom the car was registered. [fol. 180] Citizens Chevrolet had nothing to do with whatever representations were made by the Chico organization to the customer. We wouldn't even know what had been said: whether they tried to sell this man a Chevrolet Impala or tried to sell him a Ford Galaxie.

Under our arrangement with Chico he would appraise and make the allowance on the used car if there was a trade-in. Chico operated the used car lot right next to the Gemco property at Anaheim.

The basis of my arrangement with Mr. Petty was substantially the same as the basis pursuant to which I supplied cars to Mr. Chico. Citizens Chevrolet also sold cars

through Cal Stores in Lakewood in approximately the same manner as it sold through the Chico operations in Gemco.

The automobile section that Chico operated in the Gemco store in Anaheim in 1960 was about 30 by 50 with three desks and a salesman for each desk. Mr. Chico had an office at Autorama, which was the used car lot he operated adjacent to Gemco. We furnished this Gemco location with literature on Chevrolets for them to pass out. They had signs about all makes and models of new cars available. There were pictures of different automobiles there. I would say [fol. 181] they had a picture of a Chevrolet. All of the Chico new car operations in discount house stores were the same with desks and literature. All of them were the same basic set-up.

On the sale to G. R. Wolfe, Mr. Diamond called me and told me that he had a customer for an Impala coupe and could I furnish the car and for how much money. I got the automobile, I called Mr. Diamond back, told him I had the type of unit that he wanted, it was going to cost X amount of dollars, and is this the unit that the customer would accept? I understood at that time that he was going to add a certain amount to the price which I was quoting to him; that he was going to thereby make a profit on the transaction. This profit was a plus factor just as in the case of Mr. Chico and Mr. Petty. I was told that Mr. Diamond had a placard in his window that said something about all makes and models of new cars. Neither at the time when I delivered the car to Mr. Wolfe nor right after the delivery did I talk to Mr. Newman about it. The only ones I talked to at the time of delivery of the car were Mr. Wolfe and Mr. Diamond. When Mr. Newman talked to me on March 28, 1961 about this sale through Mr. Diamond to Mr. Wolfe, he fired me. I think that was the ultimate. He just told me that he couldn't no longer continue in this manner.

[fol. 182]

WILBUR S. NEWMAN

Designation by Plaintiff

My name is Wilbur S. Newman. I reside at 1446 Royal Boulevard, Glendale 7, California. I have been the principal owner of Citizens Chevrolet Company, 2030 Colorado

Boulevard, Eagle Rock, California, since approximately 1956.

In the early or mid-part of 1959, Citizens Chevrolet entered into a business relationship with Robert Chico (doing business as Chico Auto Sales, Inc.) under which Citizens would deliver cars to Mr. Chico for factory invoice cost plus \$85.00. Citizens Chevrolet had a substantially similar agreement with Mr. Marvin Petty (doing business as Union Car Sales). I looked to Mr. Chico or Mr. Petty for payment for the automobiles and not to the person who actually received and drove the car. The business arrangements with both Mr. Chico and Mr. Petty at all their locations were terminated around the first of 1961.

During this 18 to 20-month period that Citizens was doing business with Mr. Chico and/or Mr. Petty, Citizens Chevrolet owned no interest in any of their operations. At [fol. 183] no time did any Citizens Chevrolet personnel work at any of the discount house locations.

Q. At any time during that period, sir, did you give any cars to Mr. Chico or to Mr. Petty for display at any of these locations?

A. No, not to my knowledge.

At no time did Citizens Chevrolet advertise by any media that a customer could secure an automobile at any of the discount house locations operated by Chico or Petty; and at no time did Citizens Chevrolet report to the Department of Motor Vehicles any of Mr. Chico's or Mr. Petty's locations as branch locations of Citizens Chevrolet, although I am aware that under California law it is my obligation to report each and every branch location.

In the year 1960, to the best of my recollection, we sold approximately 300, 350, 400 cars to Mr. Chico, and I would say approximately 100 to 125 were involved in my business relationship with Mr. Petty.

In December 1960, between Christmas and New Year's, I received a call from the Chevrolet Zone Office in Los Angeles and was asked to come down to the office. At the time of the telephone conversation I don't recall being told that I was to meet with Mr. Roy Cash (Regional Manager, Pacific Coast Region, Chevrolet Motor Division). [fol. 184] When I arrived at the zone office I had a meeting with Cash. We met in a room by ourselves. No one else

was present. At no time prior to this, during the entire period that I've owned Citizens Chevrolet, have I had occasion to meet with a Regional Manager of the Chevrolet Motor Division in a personal, private meeting like this one.

Q. Now, as best you can recall, Mr. Newman, will you state for us what you said to Mr. Cash and what he said to you?

A. Well, it was a very short meeting; it was four or five, not over four or five minutes, and I think we exchanged—

Q. Will you keep your voice up, please? I am having a little trouble hearing you.

A. I think it was about four or five minutes and he just asked me to take a look at the discount house business, which I told him I would. And he said he thought it was wrong; he couldn't tell me what to do; and at no time—at that time I didn't agree to stop it nor was I encouraged to stop it. He said, "I want you to take another look at it. We think it is wrong, and to look at it from your viewpoint," which I did, but at no time did I agree to anything at that meeting.

[fol. 185] Q. Now, he suggested that you take another look at your discount house business because he and General Motors, I take it, thought it was wrong,—

A. Yes.

Q. —is that an accurate statement of what he told you?

A. Yes, sir.

Q. And did he also say to you that he could not tell you what to do?

A. Yes.

Q. And that statement was made in connection with whether or not you would continue to do business with the discount houses?

A. Yes.

Q. Now, did he tell you a story at that time, Mr. Newman?

A. Yes, he did.

Q. Will you tell us as best you recall what the story Mr. Cash told you was?

A. Well, it's a story—he said, "Well, you"—he related it. I don't know what it was, something about one of his children, he said, "I can tell them to stop something. If they don't do it," he says, "I can knock their teeth down their throats."

[fol. 186] Q. He told you that he couldn't stop his chil-

dren from doing something, but he could knock their teeth down their throat?

A. Yes, he said "the first time," but the second time he said he could do something about it.

Q. What did you understand that story to mean at the time and place of your conversation with Mr. Cash?

A. I didn't think anything about it, because he would tell stories like that once in a while, and I have worked with him and for him, both as an employee of Chevrolet and as a dealer.

Q. You thought nothing at all about a story like that he told you?

A. No.

Q. Now, he told you that he could not tell you what to do about discount house selling, is that correct?

A. That's right; that is what we were talking about.

Q. And he did not, did he, during the course of this conversation mention to you in any way that the discount house selling constituted any violation of your dealer's selling agreement, did he, Mr. Newman?

A. Not to my recollection, no.

[fol. 187] Q. Did you understand that statement, Mr. Newman, to be in the nature of a threat?

A. No.

Q. Did you understand that statement to be in the nature of intimidation?

A. No.

Q. Did you discuss with Mr. Cash, at that time and place, the availability of automobiles to Citizens Chevrolet, should you decide to continue to do business with discount houses?

A. No.

Q. Now, is it not a fact, Mr. Newman, that you repeated the substance of that story Mr. Cash told you to Mr. Spoo at the time you instructed him to cut off Mr. Chico and Mr. Petty?

A. I can't answer. I don't remember.

During this meeting Mr. Cash did not tell me that the places of business of Mr. Chico and Mr. Petty were branch locations of Citizens Chevrolet.

Within a week following this meeting with Mr. Cash, I instructed Mr. William Spoo, my salesman in charge of discount house sales, to discontinue delivering cars to Mr.

Chico and Mr. Petty. And whereas from 1958 through the [fol. 188] fall of 1960 my dealership solicited business from from various discount houses and referral services in the Los Angeles area by having my personnel write letters to them (See Plaintiff Exhibits 164 and 165), after the meeting with Mr. Cash, I no longer this solicited this business.

On March 25, 1961 there was a transaction evidenced by an invoice from Citizens Chevrolet to a Mr. G. R. Wolfe.

Approximately at the end of March 1961, I was called by Mr. Young to come down to the zone office. He had something he wanted me to listen to. So I went down to the zone office. Mr. Young told me he had a recording of the conversation between Mr. Diamond and Mr. Wolfe when he called Bill Spoo and bought the car from him. Max Young asked if I would buy it back and I said yes, which I did.

I didn't discuss with Young whether or not the amount I was going to pay to re-purchase the car was more than I had sold it for originally; it didn't make any difference to me. Nor did I question Young's right to ask me to buy a car back.

Q. And you blandly acceded to his request that the car be repurchased?

A. Yes.

[fol. 139] Q. Is that the usual thing, for the Chevrolet Zone Office to call you down and play a tape recording in respect to an automobile which your dealership had delivered?

A. I hadn't heard it before, no.

Q. Was that the first time in your experience as a Chevrolet dealer that that had happened?

A. Yes.

Q. And was that the first time in your experience as a Chevrolet dealer that a representative of the Chevrolet Motor Division asked you to buy a car back that you had sold?

A. To the best of my recollection, yes, it is.

On or about March 9, 1961 Bill Spoo received a congratulatory letter from Mr. Kenneth Staley, General Sales Manager, Chevrolet Motor Division, for being the number one fleet salesman in the Pacific Coast Region (comprising 11 states) for the year 1960 (See Plaintiff Exhibit 168).

I fired Bill Spoo on or about March 28, 1961.

I was a member of the board of directors which authorized that \$5,000 of Dealers' Service, Inc. funds be contributed to the shopping activities to be conducted by the three defendant dealer associations.

Q. And wasn't it understood at the time that you authorized the dispensation of those funds that the Chevrolet Motor Division was to secure the information that was brought out as a result of the shopping activities?

A. To my knowledge, no, I don't remember that.

Q. Well, did you not inquire as to what would happen to the cars that were purchased with the funds which, in part, were created by the \$5,000 which you helped authorize?

A. I didn't inquire, no.

Q. And it was never reported to you at any time that the information secured as a result of the shopping activities with the money created by the three defendant dealer associations was going to be turned over to the General Motors Chevrolet Division?

A. No, not to my knowledge.

Q. So the first time you had knowledge of the fact that the shopping activities were being related to General Motors was when Mr. Young called you in?

A. To the best of my recollection, yes.

[fol. 191] Cross-Designation by All Defendants

At the current time Citizens Chevrolet is engaged in litigation in respect to collecting certain sums of money from Mr. Petty.

The arrangement that I had with Mr. Chico was that as the cars were delivered they were to be paid for. To my knowledge there was never any change in the arrangement. The negotiations for the sale were made at the Chico place of business—the negotiations with the buyer. They would notify us that they had a buyer for a certain type of car. We delivered the car to a representative of Chico at our place of business and it was at that time that the car was to be paid for.

The first time that I experienced any difficulty with the business of Mr. Chico in respect to his payments for the cars was early in November of 1960. I woke up to the fact Mr. Chico owed me \$80,000 and that is when I first got con-

cerned. The way he accumulated an indebtedness of \$80,000 was that at the time he was paying for these cars by draft and, as the cars were picked up, he would give Bill Spoo a draft and we would put that into the bank. Through some unknown reason, he told Spoo that he had talked to me which I have no recollection of and he said he wanted to change over from drafts to checks. The first thing I knew [fol. 192] it, that is when I woke up to the fact that he owed me \$80,000; I had about 20 or 30 checks upstairs which hadn't been put in and when I put them in, he couldn't pay the checks. The checks were dishonored or bounced.

At the time I was aware that Mr. Chico owed Citizens Chevrolet this amount of money I had occasion to discuss the matter of his owing this money to us many times. I discussed it in November and in December of 1960. The only thing he advised me was that he would pay me if he could. I didn't come to any conclusion or reach an agreement with him with respect to whether or not the Associates Discount Corporation (the finance company) was going to require substantially the amount of money which Mr. Chico then owed to me. The only thing was I had to play along with him when he owed me this amount of money, so I wouldn't lose it all. I thought I could work it out. Any cars I delivered to him in, I would say, the latter part of November or early December, the Associates Discount Corporation agreed to pay me direct and bypass Chico, so they would make sure I would get my money.

In late November or early December I reached agreement [fol. 193] in which Associates Discount Corporation was going to make direct payment to me for the cars delivered to Chico—not all—just the ones that Chico financed through Associates.

During the month of December 1960 I think he reduced substantially the amount of money which he owed to me. I went down there at one time and secured \$20,000 in certified funds, that was November some time, and I kept after him every day almost in order to get the money I could out of him to reduce the amount owing. I think when I stopped doing business with him I got it down to the point where I figured I might as well just chop it off and take what loss I had to take, and I think it was approximately around \$28,000, I am not mistaken.

Q. So that it would be accurate to state that in a period of about four weeks or thereabouts he reduced his indebtedness to you from \$80,000 to \$28,000, and also was then current on the cars which he was getting from Citizens Chevrolet?

[fol. 194] A. I don't think I would give him any cars unless he would pay for them at that time.

Q. You were giving him cars in December 1960 and he was paying for those as they were received?

A. Yes.

Q. And the same time he was also reducing his indebtedness from \$80,000 to \$28,000 over a period of about four weeks?

A. Somewhere like that.

Q. At any time did Chico deny to you that he owed you any money?

A. Not to my knowledge.

Q. He always admitted the indebtedness?

A. I so understand.

Q. Even after you stopped selling him, Mr. Chico continued paying you the money he admitted owing to you?

A. He never admitted it outright. He never paid for them, so he evidently owed it.

Q. After he stopped doing business with you he continued to pay you?

A. No, he didn't.

Q. He stopped paying you?

[fol. 195] A. To the best of my recollection after I stopped doing business with Chico he never paid me a cent.

Q. Are you aware of the fact that he went out of business at or about the time that you refused to deliver Chevrolets to him?

A. I understand that. I don't know when he went out of business.

The first time I experienced any difficulty in respect to collecting moneys due from Marvin Petty or the Union Car Sales was around the latter part of December, to the best of my recollection. I believe at that time he owed me somewhere in the neighborhood of \$20,000.

Q. Did you make any arrangements to have that amount paid to you or any part thereof?

A. No. I put a keeper into the CMA store, Union Car Sales in Torrance, I think January 12th. I took over his

operation and tied up his bank account and everything like that.

Chico and Petty still owe me \$20,000—\$10,000 apiece.

In the forepart of January 1961, I told Mr. Spoo not to do business with discount houses any more. Prior to that, I mentioned it a number of times to Mr. Spoo. Even in November, when I had my problems with collecting my [fol. 196] money, I told him if I ever got any way near even that I would definitely stop. I discussed this on numerous occasions with Mr. Spoo in November and December of 1960.

Before becoming the dealer in Eagle Rock, I worked in the Chevrolet Los Angeles zone office for about 10 years—from 1946 to 1956. My last position was zone fleet manager from 1949. I have known Mr. Cash since 1954. Between 1954 and 1957, Mr. Cash was the zone manager while I was the fleet manager in the Los Angeles Chevrolet zone. We had our offices in the same place and I was in touch with him almost daily. I would see him every day almost unless he was out of town or I was out of town and we had reasons to discuss mutual problems about the sale of Chevrolets. During this period, Mr. Cash and I became very well acquainted.

Q. You are not afraid of Mr. Cash, are you?

A. I should say not.

During the time I worked in the zone office and since 1956 as a dealer, I have become familiar with the relationship and operations between zone officials and the dealers. Unless you have been a dealer and worked for Chevrolet, I don't think you can see the close ties between the two of us. It is a mutual understanding. It is a very close relationship. If I need some help in my office or my parts and [fol. 197] service departments, they have men available to come out to help and guide me. They have programs which I can institute in my place of business—programs for improving my salesmen, hiring them, training men so that they know the product so they can better sell and service. So they come out with any improvements that they can to help the customer to be better satisfied with Chevrolet. They have a General Motors training program, a training center out in Burbank where they train mechanics, they train salesmen, and we can take advantage of that at any time we desire.

When I talked to Mr. Cash in late December 1960, Mr. Cash said he wanted me to review my operations and take another look at discount house selling. To the best of my recollection, he asked me to review my operations in the light of the critical nature of the problem as it affected the entire franchise system of distribution. I believe he said it was wrong and he wanted me to take another look at it, and whether it affected my selling agreement he didn't know. So, of course, anything that affects the selling agreement that I have with Chevrolet Motor Company I am very concerned about, because that is my livelihood as a Chevrolet dealer. He thought it was undermining the franchise system—this mode of operation.

[fol. 198] Q. Why did you tell Spoo not to sell through discount houses any more? Give me all of the reasons and try to explain what went on in your mind, what caused this decision?

A. Well, like I testified yesterday, the first thing it was was this money shortage where I didn't get paid on the cars that I had already delivered to him, along with the talk with Mr. Cash, this letter, and all in all, I finally decided that it wasn't good for the business and wouldn't be good for me, if someone might come along and open up a discount house next to me, someone from San Diego or someplace like that, and sell cars in competition with me right next door to me, which I couldn't compete with.

Also, service was quite a problem. I couldn't service all the cars I was selling and the discount house didn't have any setup for service. So, if they didn't bring them back to me, they would have to go some place and they might be disgruntled customers if they had something go wrong with their cars that no one would fix in that area. You can't expect another dealer to take care of some of the things that we might have missed on new car get-ready which is our responsibility.

I am very short of service. I have outgrown my facilities. [fol. 199] I haven't got enough service to take care of my sales. In 1960, the customers whom I sold through discount houses came back very seldom. I don't know where they went. I really had no contact with them at all so that I had no opportunity to maintain the Chevrolet good will with respect to these people who represented a fifth or a sixth of my new car business.

In January and February 1961, on a number of occasions, I warned Mr. Spoo that I wanted him to be careful that he wasn't delivering to a discount house. I never retracted these instructions to him to cease selling through discount houses. So, when he sold through this Arthur Diamond outfit in the latter part of March 1961, I discharged him.

[fol. 200]

GWYNN BACON

Designation by Plaintiff

My name is Gwynn Bacon. I am associated with the Chevrolet dealer in Glendale, Allen Gwynn Chevrolet. I am president of Allen Gwynn Chevrolet. From 1955 until October 1962 when Mr. Allen Gwynn died I was vice-president and general manager of the dealership and involved in day-to-day conduct of its affairs.

For a period of time prior to the end of 1960, I couldn't tell you when we started, Allen Gwynn Chevrolet was selling new Chevrolet automobiles on a referral basis through AAAA Auto Leasing pursuant to an arrangement with them. Under this business arrangement, AAAA would refer a customer or send us an order with a deposit describing a particular car, a particular color, certain options, certain accessories, and we would place the order with Chevrolet. When the car arrived we would call them and they would pick it up and we would sell it—we would register it in the name of the individual and collect the sales tax and license fee for it. AAAA would inform someone at our dealership of the name of the person to whom the car would be registered. Payment would be made to us partly from the individual and partly from AAAA with that part from the individual probably being the down payment or deposit. [fol. 201] The balance was paid either by AAAA or some financing institution. We had no difficulties with AAAA in respect to our receiving payment for the cars that were sold. Under the arrangement with AAAA, we did not ordinarily see the customer. A representative of AAAA would come and pick up the car. AAAA Auto Leasing had a place of business. That was not our place of business. We had no employees there. We had no automobiles there. We did not

control AAAA's hours of operation or the prices they negotiated with customers for whom we supplied the Chevrolets. We did not list AAAA's premises on our applications for a dealer's license as being a branch of our dealership.

Q. You never had any signs or other advertising material indicating that the cars being supplied to the AAAA customers were Allen Gwynn Chevrolet automobiles?

A. We had no signs. The cars had our dealer's license frame on them as they went—

Q. I mean at the business premises of the AAAA Leasing store, did you have any sign saying that "Allen Gwynn Chevrolet cars can be bought here"—

A. No.

We also had a business arrangement with Paul Brockway. Paul Brockway was a salesman for us. A good portion of the time from the summer of 1960 to October 12, 1961 he [fol. 202] was located on our old business premises. The other portion of the time he was a salesman for Art Frost (Rambler) in Highland Park and located there. From January 3 on he was a licensed salesman for Allen Gwynn Chevrolet. He would bring people in that wanted to buy a Chevrolet and we would pay Brockway a commission. Dick Dodge, one of our salesmen, handled both the AAAA people and the potential customers Mr. Brockway would bring in.

Sometime between Christmas 1960 and New Year's Day (1961), Mr. Gwynn and I met with Mr. Roy Cash at his request in the Zone Office in Los Angeles. On that same day I instructed Mr. Dodge to discontinue doing business with AAAA Auto Leasing. Our conversation with Mr. Cash was brief—about 5 minutes. We did not discuss the details of any particular arrangements. Mr. Cash told us that a situation had developed that was a detriment to our franchise system, and that was in selling to discount houses and referral systems, and he hoped that we could see fit, if we were doing it, to discontinue it. And we were so pleased, and thoroughly agreed with him, and we were happy to discontinue, and the meeting was over. After that meeting with Mr. Cash I instructed Mr. Dodge to terminate the relationship with AAAA Auto Leasing.

Q. You and your uncle had the freedom, did you not, at any time prior to talking with Mr. Cash, on your own ini-

[fol. 203] tiative to cease doing business with the AAAA Auto Leasing Service, did you not?

A. Yes.

Q. And you chose, despite the fact that you had the freedom to discontinue it, you chose to continue it right up to the very day you talked to Mr. Cash?

A. That was our choice.

Q. Then you met with Mr. Cash and you decided that you wanted to discontinue doing this business?

A. That's right.

Q. Can you tell us why it suddenly became such a desirable thing to discontinue doing this business that you continued with for several months, suddenly right after talking to Mr. Cash?

A. We were very hopeful if Mr. Cash talked to the other dealers, any other dealers that were doing business as we were, we were hopeful that they would see fit, as well, to discontinue it.

And we understood that Mr. Cash was going to talk to the other dealers.

In or about the first week of January 1961 I received a call from Bruce Jermyn of Courtesy Chevrolet in which he said that somebody had reported one of our cars at AAAA Auto Leasing; Jermyn wondered if we were going along with the program. I said, yes, we were, but we had 10 or 11 [fol. 204] or 12 cars that were on order that we would continue to deliver until such time that those orders were delivered. I said "perhaps the car you have seen is one of those cars." He said "fine, thank you very much." And that was it. I don't usually get calls from my competitors inquiring about the details of my business and this was the first such call from Mr. Jermyn. I was very pleased that he called because I could tell him that we were going along with the program and exactly why this car was there.

Beginning in or about March 1962 and continuing up through December 1963, Allen Gwynn Chevrolet delivered new Chevrolets to persons referred by Dealers Diversified Services, Inc. which operates at the Fedco stores. Mr. Allen Gwynn approved this business relationship.

Cross-Designation by All Defendants

Allen Gwynn Chevrolet is one of several Chevrolet dealerships in the Los Angeles metropolitan area. They and

the dealers of other makes are our principal competition in the selling of Chevrolets. There is intense competition in selling Chevrolets as against the sales efforts of other Chevrolet dealers. In selling new Chevrolets Allen Gwynn Chevrolet has the right to determine to whom its cars will be sold and the right to determine the price at which we [fol. 205] will sell them. We have the right of choice and selection both as to customers to whom we will sell and the prices at which we will sell.

Q. You don't know, then, at what price AAAA resold the car to the customer, is that right?

A. They didn't resell it. We sold the car to the customer, but what price AAAA got over and above the price that we were paid for the car, I do not know.

Q. But they were customers that, but for this arrangement, you probably would not have seen?

A. That is correct.

Allen Gwynn Chevrolet formerly had a location authorized in our Selling Agreement for the sale of new Chevrolets at 1809 South Brand Boulevard, Glendale. Subsequently we moved to a new location, 1400 South Brand Boulevard, Glendale. Under our new Selling Agreement our new car operation was authorized to be located at 1400 South Brand Boulevard, and by April 1961 there was no authorization to continue to use the 1809 South Brand Boulevard address for the sale of new cars; however, when we moved we left two salesmen, Mr. Dodge and Mr. Brockway, back at 1809 South Brand Boulevard. This is where my salesmen, Brockway and Dodge were located when they sold the car in [fol. 206] March 1961 that was shopped. At that time these premises were not authorized as a location for the sale of new cars. This sale by Mr. Brockway had nothing to do with a discount house. It was simply a sale from an unauthorized location. We then completely closed down the store and brought the salesmen up to the new location; took all the signs off the building.

When we resold the shopped car, we did not lose money on it. As it turned out, we sold it as a used car and made an over-all profit on it.

[fol. 207]

R. MITCHEL MC CLURE

Designation by Plaintiff

My name is R. Mitchel McClure. I am the president of Courtesy Chevrolet located at 866 South Western Avenue, Los Angeles. I also own a substantial ownership interest in each of the following Chevrolet dealerships: Courtesy Chevrolet, Phoenix, Arizona; Suburban Chevrolet, Chandler, Arizona; Courtesy Chevrolet, San Jose, California; Courtesy Chevrolet, San Diego, California.

On a day-to-day basis, the business of Courtesy Chevrolet in Los Angeles is conducted by my general manager, Bruce Jermyn.

Between 1955 and 1960 Courtesy Chevrolet has done business with discount houses and referral services, except for one year which I think was 1959 during which I had a policy that we would stay with the retail business. I am not familiar with the names of the discount houses or referral services with which we did business, or the periods of time involved, or the financial arrangements applicable to each such discount house or referral service.

I had a meeting with Roy Cash, probably in December [fol. 208] 1960. My secretary advised me that I was to be in the Chevrolet Zone Office in the office customarily used by the zone manager. Just Mr. Cash and I were present. The meeting lasted about 10-15 minutes.

Probably on this same day of the meeting with Mr. Cash, or within a day or two, I gave my general manager, Mr. Jermyn, instructions to completely discontinue Courtesy Chevrolet's business with discount houses and referral services.

I do not have any interest in any discount houses or referral service. Courtesy Chevrolet does not own any premises or pay part of the rent on any premises used by a discount house or referral service; we do not have any employees located at the premises which discount houses or referral services operate; we have no control over the manner of operation of any discount houses or referral services and to the best of my knowledge have never had any automobiles on display at the premises of a discount house or referral service.

[fol. 209]

WILLIAM C. PIPPIN

Designation by Plaintiff

My name is William C. Pippin. I live at 12641 Hesby Street, North Hollywood, California. I am the General Manager of West Adams Chevrolet. I am in charge of the day-to-day operations of that dealership and am responsible to Mr. Vernon Trider, the owner.

Beginning in early 1959 and continuing to early January 1961 West Adams Chevrolet had an agreement with Fleet Sales Company under which West Adams Chevrolet sold new Chevrolets to persons referred to it by Fleet Sales Company. During that period West Adams Chevrolet did not provide Fleet Sales Company with any advertising materials or cars for display. West Adams Chevrolet had no signs or banners posted at Fleet Sales Company's place of business, and had no salesmen or other persons employed on the premises of Fleet Sales Company. West Adams did not tell Fleet Sales Company how to run its business, nor did West Adams Chevrolet own any interest whatever in Fleet Sales Company or in the premises on which it conducted its business. West Adams Chevrolet did not list the [fol. 210] premises of Fleet Sales Company as a branch location on its application for its dealer license, nor did West Adams Chevrolet during the time of its agreement with Fleet Sales Company regard that company as a branch location of West Adams Chevrolet. Either party was free to terminate the arrangement at any time.

When the arrangement was first made with Fleet Sales Company we paid them a flat fee, \$17.50 as I recall, for each referral whether the sale was made or not. We weren't happy with that arrangement. The people at Fleet Sales Company suggested that I bring in Bernie Dottl from another dealership which we did. At that time we negotiated a new type of compensation under which we paid Fleet Sales Company one-third of the gross profit on each sale made to a referral up to a maximum of \$75. The salesman handling the deal was paid 25% of the gross profit.

Q. And you also negotiated a price at which you would quote automobiles to persons that Fleet Sales Company referred to you, did you not?

A. Not a firm price. In other words, the price was more or less an intangible thing, in a way, that as I understood it, in order to attract the people in, had to be a little bit under [fol. 211] a line price. Different types of the market would control that.

Q. So, it was your intention and the intention of Fleet Sales Company at the time this was made to provide cars to customers they referred at some small savings under what you understood to be the going market for the cars?

A. That is what I assumed, yes, sir.

Q. And that agreement never involved a fixed price but varied from time to time as the market changed, is that true?

A. That's right, yes.

During the calendar year 1960 West Adams Chevrolet sold approximately 142 cars and trucks to persons referred by Fleet Sales Company. Somewhere between the 15th and 25th of January 1961 we discontinued doing business with Fleet Sales Company.

Q. During the month of January 1961 did Mr. Trider tell you that he had had occasion to discuss the subject of selling through discount houses, referral services, or specially with Fleet Sales, with any representative of the Chevrolet Motor Division?

[fol. 212] A. As I recall, he told me he had discussed it with Dick Hawthorne.

Q. Will you tell us who Mr. Hawthorne is, sir?

A. City Sales Manager for Chevrolet Motor Division.

Q. Is he City Manager for the area in which West Adams Chevrolet is located?

A. I believe he was at that time, yes.

Q. Did Mr. Trider tell you about when it was that he met with Mr. Hawthorne and where it was?

A. I believe he told me at one time that he went to the Zone.

Q. After the conversation with Mr. Hawthorne, between Mr. Hawthorne and Mr. Trider, did Mr. Trider tell you whether or not a certain transaction to a man by the name of Teacher was in fact a shopped transaction?

A. Yes, I wasn't at the store at the time of this transaction, but when I returned a day or two later I was informed that this was a shopper deal.

Q. Did Mr. Trider inform you of that?

A. I believe Mr. Trider did when I came in, yes.
 [fol. 213] Q. Did Mr. Trider inform you that he had been informed by Mr. Hawthorne that this was a shopped deal?

A. Yes.

Q. Did Mr. Trider instruct you to have a check made out to Mr. Teacher returning his deposit for this automobile?

A. No. I believe he handled that himself.

Q. Immediately following the conversation with Mr. Trider and Mr. Hawthorne in the Zone Office, did Mr. Trider at that time issue instructions to you to discontinue doing business with Fleet Sales?

A. Well, as far as the timing, I don't know whether it was prior or after; I know that he did tell me that we would stop servicing sales through referrals from Fleet Sales.

On January 23, 1961 I told Mr. Dottl not to honor any more referrals from Fleet Sales Company.

Cross-designation by All Defendants

We weren't happy with the arrangement we first had with Fleet Sales. It was using too much of our sales management time. It was controlled by the sales manager [fol. 214] at that time, and the account was almost deleted out and practically came to a standstill; and then, as I recall, the people at Fleet Sales Company suggested that I bring Bernie Dottl in from another dealership, that he was familiar with it, and that I could negotiate as far as compensation for the salesman to handle the account, and that they would set up a figure that they thought was fair on their end of the transaction. So that became a figure that we discussed at some length with the more or less agreement that we could stop it at any time we wished or renegotiate for a different type of compensation.

[fol. 215]

VERNON R. TRIDER

Designation by Plaintiff

My name is Vernon R. Trider. I live at 2570 Mandeville Canyon Road, Los Angeles. I am the owner of West Adams Chevrolet. I have owned that dealership for 17 years.

I knew and understood that during 1960 West Adams

Chevrolet was selling cars to persons referred by Fleet Sales Company. I approved that arrangement.

Pltf. Ex. 169 is a check from West Adams Chevrolet. The check was for \$25.00 refunding the deposit on a new Chevrolet made by a Mr. G. P. Teacher; I instructed the office manager to issue this check and sent it to Dick Hawthorne, my city manager, at the Chevrolet Motor Division zone office. I had the check issued after I had a conversation with Mr. Hawthorne.

Q. You say Mr. Hawthorne personally called you on the telephone and asked you to come down to the Zone Office?

A. Yes, sir.

Q. At the time you talked with him on the telephone did he tell you what it was that he wanted to talk with you about?

[fol. 216] A. No, sir.

Q. How soon after the telephone conversation, sir, did you actually meet with him? The same day, next day?

A. I would say the next day.

Q. That conversation took place at the Zone Office of Chevrolet on Wilshire Boulevard here in Los Angeles?

A. Yes, sir.

Q. And was there anyone present besides you and Mr. Hawthorne?

A. No, sir.

Q. To the best of your recollection, Mr. Trider, would you tell us what you said to Mr. Hawthorne and what he said to you at that time and place?

A. Well, he asked me if I received Mr. Staley's letter and what I thought about it; and I thought it was very good, backed it wholeheartedly.

He said, "Do you handle any Fedco or More's, or any discount houses?" and I told him, "No, sir, and never have."

He said, "You handle Fleet Sales?"

I said, "Yes, sir, I do."

He said, "Well, it seems to be that everyone is going to [fol. 217] go by interpretation of Mr. Staley's letter, and do you feel the same way?"

I said, "You bet I do. I hope it can be straightened out."

Then he brought this Mr. Teacher's deal up and asked me if I knew Mr. Teacher. And I said, "No, sir, I do not."

At that time he told me it was a shopper. And he still asked me again what I thought about Fleet Sales. I said, "If everyone seems to be in accord to the thinking and interpretation of the letter, and they work on that basis, I am wholeheartedly 100 per cent."

He asked me if I would do it. I said, "You bet I will." I said, "I won't tell you now whether I will or not. I will go back to the store and I will call you in a week's time. When I call you, I will know and satisfy myself that the City of Los Angeles and Southern California is being cleared up."

A week later I called him, I told him I wasn't handling Fleet Sales any more.

Q. Now, Mr. Hawthorne asked you, as I understood your testimony, whether or not you were doing business with any discount houses; is that correct?

[fol. 218] A. Right.

Q. You told him you were not?

A. Right.

Q. You drew a distinction in your own mind between your account Fleet Sales Company and discount houses, did you not?

A. I did, sir.

Q. You were not lying to him when you said you weren't doing business with discount houses?

A. No, sir.

Q. Will you tell us what that distinction was and why you did not classify Fleet Sales Company as a discount house?

A. Because an individual dealer could control our sales, we thought, a little better than discount houses. Our salesman handled the customer and we classified it as a bird-dog fee.

The final decision to discontinue doing business with Fleet Sales Company was not made until a week after my conversation with Mr. Hawthorne. I told Mr. Hawthorne I would let him know in a week. I wanted that week to make sure that the other dealers, or most of them, had stopped their business dealings with discount houses. In the week between our conversation in the zone office and [fols. 219-220] the time I called Mr. Hawthorne I was satisfied that the other dealers had stopped. My decision was dependent on ascertaining that the other dealers in the Los

Angeles area that were doing business with discount houses and referral services had stopped their dealings.

[fol. 221]

ERNEST F. PORTER

Designation by Plaintiff

My name is Ernest F. Porter. My home address is 438 Oxford Drive, Arcadia, California. I am the president of Ernie Porter Chevrolet located in Pasadena. I have held that position for about 8 years.

Prior to January 1961 Ernie Porter Chevrolet was doing business with Fleet Sales Company and with Castle Sales, Inc. for approximately one year and approximately two years, respectively. During that period neither Ernie Porter Chevrolet nor I personally owned any interest in either of these companies or in the Thriftmart Grocery Co. which owns the More Stores in which Castle Sales, Inc. was located. Ernie Porter Chevrolet never had any of its sales personnel or any personnel on our payroll located at either the location of Fleet Sales Co. or any of the locations operated by Castle Sales, Inc.; nor did we at any time make available to either Fleet Sales Company or Castle Sales, Inc. a new Chevrolet for display at any location; nor did we ever advertise that a person could purchase an automobile from Ernie Porter Chevrolet by going to the location of Fleet Sales Company or any of the locations of Castle [fol. 222] Sales, Inc.

In late December 1960, in close proximity to my receipt of a letter from Mr. Staley addressed to all Chevrolet dealers dated December 29, 1960 (Pltf. Ex. 121) one of the secretaries at the Chevrolet Zone Office called and asked me if I could come down to the Zone Office the following day. At the zone office I met with Mr. Roy Cash, the Chevrolet Regional Manager. I can't remember having had occasion to meet with Mr. Cash in a personal and private meeting of this sort since he was appointed Regional Manager. On occasions we had various meetings that I attended where I could have talked with him, but I don't remember just where and when.

Q. At that meeting at the Zone Office, Mr. Porter, will you relate to us as best you can recall what you said to Mr. Cash and what Mr. Cash said to you?

A. Just exchanged a few words about our families, and if I remember Mr. Cash asked me what I thought about this type of selling through discount houses. I told him that I thought it was a very poor way to merchandise automobiles, it wasn't a profitable way to merchandise automobiles. I [fol. 223] said, "I am in favor of stopping it." The fact is that I told him that I was going to stop immediately, stop this type of selling.

Q. You told him right then and there that you were going to cut this out?

A. Yes, I did.

Q. Well, did Mr. Cash discuss with you at that time whether or not you were paying for advertisements from More, Incorporated?

A. No.

Q. Did he discuss with you whether or not you were furnishing literature to them?

A. No.

Q. Did he discuss with you whether or not you were furnishing them order blanks?

A. No.

Q. Did Mr. Cash tell you that your business relationships with their Castle Sales or with Fleet Sales was a violation of your Dealer Selling Agreement?

A. No.

Q. No discussion about the Dealer Selling Agreement at all, was there, Mr. Porter?

A. Not that I remember, no.

[fol. 224] Q. You understood, did you not, from the conversation that you had with Mr. Cash, that it would be a pretty good idea to stop doing business with Fleet Sales and Castle Sales?

A. It influenced me.

Q. It was, in fact, the major reason that you stopped doing business with Fleet Sales and Castle Sales, was it not, Mr. Porter?

A. I'd say that influenced me to make my decision at the time I made it.

Q. Did you, after meeting with Mr. Cash, instruct anyone

in your dealership to end the business relationship with Fleet Sales and Castle Sales?

A. Yes.

Q. Who was it that you gave those instructions to?

A. Mr. Vogan.

Q. Will you tell us, sir, as best you can recall, what you told Mr. Vogan?

A. I—Bill Vogan and myself had talked on quite a few occasions about discontinuing this kind of business. I just told Bill Vogan, I says, "Well, I am sure that Chevrolet doesn't want this kind of business and after talking to Chevrolet, I made up my mind it's a good time for us to make up our mind, and I have decided that we are going to [fol. 225] stop this, this type of business."

Q. Did you tell him that you had talked with Mr. Cash?

A. Yes.

Q. Did you tell him that that was an influencing factor in making this decision?

A. Not in that many words.

Q. Did you tell him you were stopping because of pressure from Chevrolet?

A. No.

Q. In your conversation with Mr. Cash, did you ask or did he volunteer any information as to whether or not he was going to talk with other dealers in connection with their selling activity to discount houses or referral services?

A. I believe he may have said that he had some other dealers to talk to. I say he might have. I really don't know—I don't remember for sure whether he did or he didn't.

Q. Were you concerned about the fact that other dealers might be continuing to do business with discount houses or referral services and you had given up that business?

A. I would say no, I was not concerned personally. [fol. 226] Pltf. Ex. 181 is a check of Ernie Porter Chevrolet dated January 21, 1961, made payable to Gus Teacher in the amount of \$25.00. I authorized the payment of that sum to Mr. Teacher. I do not now remember whether at the time I authorized this check I knew if Mr. Teacher was going to pretend he was buying a car through Fleet Sales Company. I personally had nothing to do with this so-called shopping expedition. This was Mr. Miller's and Mr. Vogan's innovation. The check was for services rendered

by Mr. Teacher and was not the money he used to put a deposit on a car at West Adams Chevrolet.

I had occasion to see the original or a carbon copy of the Teacher invoice.

Q. And who brought it to your attention, sir?

A. Mr. Vogan.

Q. And what did you do with it, sir?

A. I believe I called Mr. O'Connor and told him about it.

Q. Why did you do that, sir?

[fol. 227] A. Well, Chevrolet was trying to stop, stop this activity, and—

Q. And you were going to help them?

A. Call it whatever you want to.

Q. And were you concerned about the fact that West Adams Chevrolet was continuing to do business with Fleet Sales Company after you had stopped?

A. Well, I knew you were going to ask me about these deals, and I still personally wasn't, wasn't concerned, because I wasn't going to start selling them again, but I had a man that was concerned in my organization, and he liked this type of business.

Q. Mr. Miller?

A. Yes, yes; and he of course had—evidently he heard that this was still going on and that somebody else was selling his accounts, and he was quite upset about it; and, nevertheless, I did—as I said, I called Chevrolet, and—

Q. So, at the time Mr. Miller was pretty upset about it, is that right?

A. Yes.

Q. And when he thought somebody was continuing to do business—

A. Yes.

[fol. 228] Q. —with Fleet Sales?

A. That is right.

Q. Did Mr. Miller urge that you engage in this shopping activity, Mr. Porter?

A. He didn't talk to me about it.

Q. Did he talk to Mr. Vogan?

A. He talked to Mr. Vogan.

Q. And you are not sure, now, whether you knew about it in advance or not?

A. No, I am not.

Q. But you did bring it to the attention of Mr. O'Connor, did you not?

A. Yes.

Q. And you did that in the hope that he would see to it that West Adams Chevrolet dropped the Fleet Sales account, as you did, did you not?

A. Well, I did not know what action they would take on it, and I don't know about—

Q. Wasn't that your intention in bringing this information to his attention?

A. Well, Chevrolet was trying to stop this kind of business, and so I thought if this would help them, I'll help them.

Q. Then, you were concerned about whether or not other [fol. 229] dealers were doing business with discount houses and referral services, were you not, sir?

A. Well, I personally was not.

Q. But you thought you would be a good guy and let General Motors know about it?

A. Maybe that's the answer.

Pltf. Ex. 182 is a check of Ernie Porter Chevrolet dated February 28, 1961, in the amount of \$25.00 made payable to Inez Oelwein.

I signed that check. The check was in payment for services rendered. The services consisted of shopping for a new Chevrolet through Castle Sales.

Pltf. Ex. 141 is a handwritten report of eight pages, signed by Inez Oelwein.

This document was given to me by Mr. Vogan. I think I then mailed it to Mr. O'Connor. I think I called Mr. O'Connor and explained what Vogan had had here, and I think he asked me if I would mail it to him.

Cross-designation by All Defendants

I agree with Mr. Charles Miller's testimony regarding the manner in which Ernie Porter Chevrolet did business with both Fleet Sales and Castle Sales. The method he de-[fol. 230] scribed is accurate to the best of my knowledge.

On frequent occasions in the years 1959 and 1960, and probably even in 1958 my accountant and business manager brought to my attention the profitability or lack of profitability in selling through discount houses and referral services. He questioned me on a lot of occasions as to whether

or not we should continue this kind of business. We paid 33 $\frac{1}{3}$ percent out of our gross profit to Castle Sales or Fleet Sales.

As to why I engaged in discount house selling for the past two years before the meeting with Mr. Cash despite the fact that I thought it poor and unprofitable merchandising is a hard question to answer. It's a hard question to answer why you do anything wrong. We make mistakes in business. Sometimes we sell a car at a loss by poor trading. There are lots of reasons. You just do something. I had stopped on other occasions. I did stop selling, this discount selling. Then I don't know, Charles Miller came up with this one deal, first More Incorporated, and I went along with that one with him; then he picked up this Fleet Sales, so we let [fol. 231] him go along with that.

No one in the zone office of the Chevrolet Motor Division asked me to keep an eye on other dealers and bring to Chevrolet's attention any facts concerning whether or not other dealers in this area were doing business with discount houses and referral services.

[fol. 232]

JOHN N. ARMOUR

Designation by Plaintiff

My name is John Armour. I live at 1506 North Olive in Santa Ana, California. I was formerly business manager and am now comptroller of Eddie Hopper Chevrolet in Garden Grove. Eddie Hopper Chevrolet was a member of Losor Dealer Association in 1960 and 1961. During 1960 and 1961 my responsibilities as business manager were for the accounting, advising Mr. Hopper on various aspects of the business, calling to his attention things that might affect the operation of the dealership.

Eddie Hopper Chevrolet was one member of Losor which never had any dealings at all with discount houses or referral services. Eddie Hopper Chevrolet maintained a position in opposition to discount house merchandising of Chevrolet automobiles. Mr. Hopper frequently discussed with me discount houses and various of the problems arising out of such merchandising. We discussed it generally,

the effect on our business operations and the loss of sales. It certainly was not having a favorable effect on our business. With respect to the loss of sales Mr. Hopper said that the sales organization was dissatisfied because of the fact that we would have a deal about closed and then lose [fol. 233] the sale to a discount house. In some cases, we had cars ordered for people and the deals were cancelled.

Mr. Hopper originated conversations with the Zone Office about the discount house problem in that he was protesting all of the time about these sales. I don't know who he talked to, but he was raising objections to these sales, because we had in the neighborhood of five of these discount houses surrounding us and we had constant competition from them. A little bit farther away there were about five more. So you can see that that affected our situation considerably. And he was protesting this all the time. I don't know for a fact that Mr. Hopper ever talked with Mr. Jere Faust, Assistant Zone Manager, but I know that he spoke with someone at the Zone Office. I would assume that he spoke with somebody there on more than one occasion because he was very active in opposing the discount house sales.

Nine employees of Eddie Hopper Chevrolet sent letters to the Central Office of General Motors at some time in the middle of November 1960. I would say that Mr. Hopper was a strong advocate of abolishing discount house merchandising of Chevrolets. And I think it is reasonable to [fol. 234] to say that he had expressed at one time or another to me during the year 1960 his desire to do all he could to help eliminate this problem.

Mr. Hopper, as of June 9, 1960, did not come to me and say anything about going out and investigating the discount house situation. I saw an ad in the paper advertising a location where you could get cars at a considerable discount. I called this to Mr. Hopper's attention and suggested to him that I go out and visit the Leonard Discount Store in Garden Grove to find out everything I could about it. I knew this type of operation would affect our dealership. In addition to going out there to see if Chevrolets were available to the public, it was also my purpose to ascertain where they were coming from. I did not purchase an automobile from Leonard's as a result of my visit there. In a letter addressed to Mr. O'Connor, Zone Manager,

dated June 9, 1960 (Pltf. Ex. 170) details of my visit to Leonard Store are reported by me.

After the beginning of January 1961 I had discussed with Mr. Hopper about stepping up my individual effort Eddie Hopper Chevrolet in an attempt to further call attention to the fact that this discount house merchandising [fol. 235] still going on. Specifically, I talked with about the possibility of actually going out and attempting to purchase an automobile. I think he came to me about He told me that he had been requested to buy a car. There is a letter that specifically sets forth that he was requested to purchase a car. (Pltf. Ex. 133, letter to Jere Fa Assistant Zone Manager, from Mr. Hopper).

I actually purchased and took delivery of a car, I believe on February 22, 1961. There was an order placed before that through the Gemco organization on their order form. I was a member of Gemco at that time, and that was probably one of the reasons why I thought it might be convenient to go back to the Gemco Store to purchase the car. Mr. Hopper advanced me the money. He wrote a check made out to me as payee which I deposited and it was understood that when I made payment on the car I was to write my own check. Naturally, I was buying the car as an individual. Mr. Hopper didn't say anything about wanting the Gemco Store to learn that Eddie Hopper Chevrolet had intended to shop this store, but that was perfectly obvious. When I went to make this purchase I insisted I must go and pick up the car, that I wouldn't allow anyone else to drive my new car. And if I couldn't get delivery [fol. 236] that way, I wouldn't take it. And they assured me that they would be happy to take me to the place where we were getting delivery of the car. I wanted to find out where they got the car. After I purchased the car, Wondries Chevrolet I brought it back to Eddie Hopper Chevrolet, along with a copy of the order, and we had a service policy and so on. I turned the keys over to Mr. Hopper. Approximately the next day Mr. Hopper told me that Wondries was coming to repurchase this car. I never learned the circumstances surrounding the repurchase of this automobile by Wondries Chevrolet. Mr. Wondries did not see me when he came down to the agency. I do not know who he talked to. However, he made his check for the repurchase of the car payable to me.

Q. Mr. Armour, isn't it a fact that one of the reasons you and Mr. Hopper were so concerned about the discount house method of merchandising was because you would find yourself in a posture where you would have to reduce your gross profits, and this would tend to drive your gross profit picture down?

A. Well, he wouldn't do business on that basis. He was going to fight it, try to eliminate it.

Q. But wasn't it a fact, Mr. Armour, that in order to meet the competition of this new form of merchandising [fol. 237] you would have had to reduce your gross profits in order to retain some of these customers who were walking out of your dealership, even after they had placed orders for their cars?

A. Oh, yes, naturally, you would have to cut down your gross profit.

Cross-designation by All Defendants

Eddie Hopper is now deceased. He died December 16, 1961.

During 1960, Mr. Hopper was raising objections to discount house sales of Chevrolets because we had in the neighborhood of 5 of these discount houses surrounding us and we had constant competition from these discount houses. A little bit farther away there were about 5 more so that you can see that that affected our situation considerably and he was protesting this all the time.

This discount house selling was affecting our profit. We have got a large investment in the business and we have got to make money to pay employees. We have 135 employees and that's an expensive operation. We have got to have sales and keep our gross profits up to maintain that organization.

[fol. 238] In June 1960, I noticed an ad in the local paper from Leonard's new store in Garden Grove that a person could purchase new cars through their store. I called this to Mr. Hopper's attention and I suggested to him that I investigate it personally. I originated this to find out what was going on. We had been hearing about this and I suggested to Mr. Hopper that I do it. He thought it was a good idea. I knew that this type of operation would affect our dealership from my experience. I have been connected

with the automobile business for approximately 40 years. During this time I have not only audited dealerships but I have been actively engaged in their organization. I wanted to find out everything I could about this type of operation at the Leonard's store. I wanted to find out if Chevrolet automobiles were available to the public out there. I was not concerned as to whether you might be able to purchase some other type of automobile out there. I was primarily interested in whether you could buy a Chevrolet by going to a discount house.

When Mr. Hopper came to me and suggested I buy a car, he just suggested "see if you can buy a car." He said, "I don't know how we will come out on this deal. We want to pick out a car that we can sell, something that we know [fols. 239-240] we can sell readily." He anticipated that Eddie Hopper Chevrolet would have to keep the car once it was purchased.

[fol. 241]

RUSSELL DE ORTO

Designation by Plaintiff

My name is Russell De Orto. I reside at 10462 Schooner Avenue, Westminster, California. I own a small business called Sales Research Company in which I make tape recordings of salesmen's techniques to help management and salesmen improve their sales presentation. Most of my clients are automobile dealers. For 16 years prior to 1960 I was a licensed private investigator in California.

One day in or about February 1961 one of my salesmen was attempting to sell my service to Eddie Hopper of Eddie Hopper Chevrolet, Garden Grove. Hopper told the salesman he was not interested in such a service but that either a Mr. Henson or a Mr. Johnson at Harbor Chevrolet in Long Beach should be contacted. I called Harbor Chevrolet and spoke with either Henson or Johnson. I made an appointment to see Johnson and met with him at the offices of Harbor Chevrolet sometime in late February or early March. I had only a short conversation with Johnson who told me that they had something I could do but that I would have to discuss it with Mr. Henson who was not there at the time.

[fol. 242] A few days later I met with Henson and Johnson at Harbor Chevrolet. Henson told me that he was president of Losor Chevrolet Dealers Association, and that they were looking for someone to make tape recordings; that they had made a few tape recordings which were not satisfactory; that they wanted someone to go to various discount houses and purchase new Chevrolets or attempt to purchase new Chevrolets and make recordings of the conversations. Henson explained that I could not do this job in the same way as I did my normal sales recording activities, that several trips to a given place might be involved and that they wanted me to put quite a lot of time into it.

Henson wanted to know what I would charge. I told him I wanted \$1000 per month. Henson was unable to tell me how long the job would last but indicated it might go on for a year. My price was based on about 40 hours of work per week and included mileage and other expenses. Henson told me he thought the price was a little high, but I did not offer to reduce it. Henson told me that he would have to contact some other people before making any commitment. Henson did not explain to me the purpose of his making the tape recordings and/or buying the Chevrolets.

[fol. 243] Within a few days after this first meeting with Henson, I called Henson and he told me that I had the job. I went to Harbor Chevrolet and met with Henson and Johnson again. At this meeting they gave me a list of the discount houses within the greater Los Angeles area which were believed to be selling Chevrolets. I was told to buy a Chevrolet or attempt to buy one at these (or other) discount stores, and to make a tape recording of each conversation involved in each purchase or attempted purchase. I was specifically instructed that I was to ascertain from the discount store where the Chevrolet was actually coming from, who would furnish the warranty and who would do the servicing. At this meeting Henson told me that he had talked with representatives of the other two Chevrolet dealer associations and that my employment was agreed to by them. Shortly after I started on this assignment—I know it wasn't the first two or three days, but later on—Mr. Johnson and Mr. Henson instructed me to check to see whether discount houses had licenses to sell cars. On the day that I first met Mr. Roberts, Mr. Johnson and Mr. Henson brought up the fact that they had previously in-

structed me to check the discount houses to see if they had licenses. Mr. Roberts instructed me to ascertain, if I could, whether or not any of the discount stores and referral [fol. 244] services to which I went had automobile dealer licenses. This meetings took place at Mr. Roberts' office.

During the period from March 9, 1961 through May 6, 1961, I personally, or other persons whom I appointed, purchased seven new Chevrolets. The following list indicates the date of purchase of each of these cars, and the name and location of the discount store and Chevrolet dealer involved:

Date	Discount House	Source of Supply
March 7, 1961 *	Leonard's Discount House, Garden Grove	Tom Mahon Chevrolet, Ojai
March 8, 1961 *	Car Wholesalers, Studio City	Kendall Chevrolet, Redondo Beach
March 9, 1961 *	Gemco Store, Anaheim	Ed Priester Chevrolet, Montrose
March 23, 1961 *	ABC Discount Store, Santa Ana	Enoch Chevrolet, South Gate
March 25, 1961 **	Diamond Realty Company, North Hollywood	Citizens Chevrolet, Eagle Rock
April 13, 1961 **	ABC Discount Store Santa Ana	(No car purchased)
April 20, 1961 **	Brockway Auto Outlet, Glendale	Allen Gwynn Chevrolet, Glendale
May 6, 1961 **	Union Store, Claremont	College Chevrolet, Claremont

[fol. 245] While engaging in each of these transactions I had a tape recorder concealed under my coat, with a hidden microphone looking like a wristwatch or similar article. The purchase from Diamond was made by me under the assumed name of Wolfe; the purchase from Union Store was made by me under the assumed name of Ratley. In connection with each purchase I was given a cashier's check either by Marion Johnson or by Glenn Roberts to use in paying for the car. A single asterisk after the date, above, indicates that Johnson furnished the cashier's check to me; a double asterisk indicates that Roberts furnished the check to me. After each purchase except the April 13, 1961 transaction had by Dennis Morse with the Econo Car Center at the ABC Discount Store, I turned over the car (or a garage ticket for

the car) to Mr. Johnson or Mr. Henson at Harbor Chevrolet or to Mr. Roberts. In each instance I turned over all audible tape recordings of my conversations to Johnson, Henson or Roberts. I had no contact at all with any representative of General Motors during this period. In addition to the above purchases, I made trips to some additional discount houses and tried to buy a car and either didn't or couldn't. (Pltf. Exs. 187, 188, 186, 189, 190, 193, 191.)

At some point during this shopping activity I knew and [fol. 246] understood that there was a campaign going on designed to eliminate the sale of Chevrolets through discount houses and I understood that "my role was to find out what discount houses were selling new Chevrolets."

Cross-designation by All Defendants

During this entire period of time I never related any of the information I accumulated to any representative of General Motors Corporation. I received no payment of any sort from General Motors Corporation.

I recall right after I started buying cars, after about the second buy I made, Mr. Henson chastised me for paying too much money for the cars. He said, "After all, we have to sell these things." And I assumed, at that time, that they would have to be sold. They furnished me a little chart I believe automobile salesmen use which stated the proper prices to pay for these cars. At the time they furnished me with that chart they said, "From now on don't pay too much for these cars, because they are going to have to be sold." After that I did a little more dickering with the individual people that I bought the cars from, because I was under the impression that they would have to be sold. If I paid too much for them, they couldn't break even.

[fol. 247] Additional Cross-designation by Defendants

Losor Chevrolet Dealers Association, Dealers' Service, Inc., and Foothill Chevrolet Dealers Association

We quite frequently shop to determine the prices at which a merchant's competition is selling products for, but the purpose for which I was hired was not explained to me in that way.

Both Mr. Johnson and Mr. Roberts instructed me to ascertain whether the discount stores and referral services I

visited had automobile licenses—the former shortly after I was hired, and the latter on the first day I met him.

Department stores have shoppers that go around to determine the manner in which competitors treat their customers and to determine the prices that competitors are getting for their products. Also, the government makes recordings when it is determining facts pursuant to an investigation.

While my business is about 95% to 98% involved with automobile dealers, there are others who shop for department stores, service stations, tire companies and other merchants. We have made tapes for tire companies and for individual service stations, department stores, and a few other industries that I don't recall right now, but our specialty is automobile dealers. It is not considered unethical [fol. 248] in the field of investigation to make a secret tape recording as long as it is done legally.

As part of my assignment in shopping for automobiles, I was instructed to analyze the sales technique of the persons at the discount houses. It seems to me it was Mr. Johnson who instructed me in the course of my dealings with these people to get an idea of how they were treating the public, but this was not the sole purpose of my employment.

In doing this, I did talk with some of these salesmen and their approach was not in line with the average ethical dealer.

[fol. 249]

JERE FAUST

Designation by Plaintiff

My name is Jere Faust; my address is 1818 Quito Way, La Canada, California. I am the Assistant Zone Manager of the Los Angeles Zone of the Chevrolet Motor Division of General Motors. I have held this position since November 1959. I have been employed by General Motors 28 years.

As assistant zone manager my area of responsibility is what is known as the single city area comprising all dealers outside of the metropolitan city. Until early 1961 Orange County was a part of the single city area. My duties fall into three broad areas. First I would say would be the maintenance of a strong, stable, quality dealer organiza-

tion. Secondly, would be to assist the dealers through analyses and presentation of programs, help them realize every sales and profit opportunity in all departments of their business. Thirdly, would be the supervision and training of the District Managers and Department heads. I report directly to Robert O'Connor, Los Angeles Zone Manager.

I first learned that Chevrolet dealers in the Los Angeles Zone were selling cars through discount houses and referral [fol. 250] services in November or December 1959, just after I arrived here. I learned of this through complaints from some dealers in my area. Those who I recall complaining were Eddie Hopper, Mr. Cone, Mr. Ayres, Mr. Lockney, and Mr. Steves, all of whose dealerships were located in Orange County. I believe that the first dealer to complain to me was Eddie Hopper. I don't report to Mr. Young but I mentioned these complaints that the dealers had been giving me and asked him what we could do about it and he said there is nothing we could do about it. I told some of the complaining dealers what Mr. Young had told me and they were unhappy about it. I also reported these complaints from dealers regarding discount houses and referral services to Mr. O'Connor during both 1959 and 1960. Mr. O'Connor said there is nothing we can do about it.

Q. What was the nature of the complaints you received from the Chevrolet dealers in Orange County?

A. They complained about the discount houses advertising new Chevrolets; they complained about salesmen soliciting prospects, that they couldn't get on deals because of the discount houses making the deals first; they complained [fol. 251] about literature being available to discount houses.

Q. Who complained about literature being available to discount houses?

A. I believe that was Mr. Hopper.

Q. When did he complain to you?

A. He had numerous complaints.

Q. Did any of the dealers mention the fact that the discount houses were creating price competition?

A. That was part of the complaint, yes.

Q. Did they tell you they were losing sales because of the discount houses?

A. They seemed to be more concerned about the fact that they weren't getting on the deals.

Q. Can you explain that a little bit?

A. From the standpoint of the membership discount houses, in particular, there was an element of impulse buying, and the salesmen would complain that the people, the customer had purchased their car before they could give them the sales pitch and the demonstration.

Q. Were the dealers concerned about their gross profit picture?

A. Yes.

[fol. 252] Q. Did the dealers state that the discount houses and referral services were hurting their gross profit picture?

A. Yes.

Q. What dealer stated that, do you remember?

A. Mr. Hopper, along with his many other complaints.

Q. Did Mr. Cone state so?

A. I believe he did. I can't remember specifically.

Q. What did Mr. Hopper state about the discount houses and referral services hurting his gross profit picture?

A. He indicated that in addition to this area of not being able to get on the deals, that when a salesman would work up a deal, the prospect occasionally went to a discount house and apparently got a better deal. He didn't quote me any figures that I recall.

Q. Did he tell you that people came in from the discount house and referral services with price quotes and were comparing them against his prices?

A. I believe he did.

Q. Did he tell you he was losing deals because he couldn't [fol. 253] match those deals?

A. I believe he did.

In early 1961 Mr. O'Connor, the three city managers and I had a meeting at which we discussed the subject of discount houses and referral services. At that meeting O'Connor reviewed a letter that had been written by Mr. Staley in regard to this activity and said that Mr. Cash had discussed this matter with dealers who had been supplying discount houses and that the dealers had decided to stop. O'Connor said that some of the dealers felt that other deal-

ers might be picking it up if they did stop. O'Connor asked me to call a number of my dealers and inform them of this conference and also to ascertain if they had received and read Staley's letter. O'Connor also asked me to tell the dealers that we hoped no dealer would pick up any of the discount house or referral service business.

Q. Did you call your dealers?

A. Yes.

Q. What did you tell them?

A. I recall asking them if they had received Mr. Staley's letter and if they had read it. I recall mentioning that Mr. Cash had discussed the matter with the supplying dealers. [fol. 254] I also mentioned that we hoped that they would not pick this up. And I believe I told them to observe if the activity was continuing and let me know.

I called Jack Coyle of Jack Coyle Chevrolet, San Bernardino, and had a discussion with him concerning what Mr. O'Connor had told me, insofar as the provisions of Mr. Staley's letter were concerned—I asked him if he had read it.

The next to last paragraph of Pltf. Ex. 122, a letter from Mr. Coyle to Mr. Staley dated January 4, 1961 reads:

Yesterday, January 3rd, our assistant zone manager, Jere Faust, called to tell me of a meeting held last week in Los Angeles by Mr. Roy Cash and some of the offending dealers. He reported that the dealers agreed to discontinue the practice immediately, and I hope the agreement will be honored by all parties.

Q. Does the first sentence summarize what you told Mr. Coyle?

A. In addition to other things, yes.

I would say that I told the other dealers I called substantially the same.

[fol. 255] Pltf. Ex. 133 is a letter from Eddie Hopper, Eddie Hopper Chevrolet, Garden Grove, to Mr. Faust, dated January 26, 1961, the first two sentences of which read:

We have complied with your telephone request to contact the Gemco organization in regard to the purchase of a new car. This contact was made by John N. Armour who requested prices on a four-door Monza.

Q. Does that first sentence correctly state the fact, that you requested that the Gemco store be shopped?

A. I think it was in a way of complying with Mr. Hopper's insistence with me on this thing. This was late in January. He felt this thing was continuing. He said he could get proof. There were a number of calls of this nature. At this particular time I believe he told me he had a man that could do it. He would dispose of the car. I said, "Eddie, I will call you back," or words to that effect.

After discussing the matter with Mr. O'Connor, I said—I called him, it was a telephone call—I said, "I want you to go ahead and buy the car from Gemco."

[fol. 256] Q. What did you tell Mr. O'Connor concerning this matter?

A. I said Mr. Hopper was quite insistent that the activity was still continuing and Mr. Hopper was in a position to give us proof, and that I wanted to let him go ahead.

Q. What do you mean by Mr. Hopper was insistent?

A. He was continuing his complaints that the discount house activity was still going on.

I got a number of calls similar to the call I received from Mr. Hopper, similar in that the complaints were that it was still going on. Most of the Orange County dealers would call me. In fact, when we were talking of other business they would mention this thing.

Mr. O'Connor, the three city managers and myself made up a list of discount houses and referral services. It was a consolidation of the unauthorized outlets. I read the names on this list at dealer meetings held in San Diego, Fontana, Bakersfield, and Santa Barbara, as part of the general meeting program. This discount house activity had been quite extensive for a period of time. The dealers [fol. 257] were quite concerned about it. And I recall in the meeting I asked the dealers if each of them had received Mr. Staley's letter and if each of them had read Mr. Staley's letter; and I told them that there seemed to be universal accord that they were entitled to know the discount house or unauthorized outlets as we knew them at that time, and I read the list for their information. I told them that it was just for their information. I don't think I would have told the dealers that they should not do business

with any of the people whose names were on the list that I read off.

Q. And you were reading off the list primarily of discount houses and referral services, which were located in the Los Angeles area?

A. Yes.

Q. Did you anticipate that the discount houses and referral services were going to go to outlying dealers in an effort to obtain cars?

A. Yes.

Q. And why did you anticipate that?

A. I had had dealers telephone me about their approaches.

Q. But do you know why the discount houses and referral services were now going to outlying areas?

[fol. 258] A. Well, their source of supply in the city apparently had been stopped.

Q. And it was your purpose in reading the list to discourage the people in the outlying area from picking up where the city dealers left off?

A. Yes.

Cross-designation by All Defendants

The responsibility in the Los Angeles Zone, because of the volume—the large amount of work—is divided among four people depending on the area to which they are assigned. For example, in the metropolitan area we have three divisions—north, west, and east, and there are three city managers, one assigned the responsibilities in each area. My area of responsibility is what is known as the single city area comprising all dealers outside of the metropolitan city.

I am called Assistant Zone Manager. There are three city managers, but I am not “over” them in any way. So far as the corporate structure is concerned, we are on the same “level”—that is—I have no more authority with respect to my local city areas than the City Managers with respect to their urban areas, and I don’t supervise any of the City Managers. When the Zone Manager is away either [fol. 259] a city manager or myself would be in charge—usually the Senior City Manager. With respect to seniority, I am, you might say, low man on the totem pole.

I recall that at the meeting in early January 1961 Mr. O'Connor quoted two paragraphs from Mr. Staley's letter (Pltf. Ex. 121)—the one which says:

"In effect, they in some instances represent the establishment of a second and unauthorized sales outlet or location contrary to the provisions of the Chevrolet Dealer Selling Agreements."

and the one saying that the Chevrolet wholesale personnel would review the letter with the dealers. Mr. O'Connor said that this was an expression of corporate policy.

This was a position that we had been waiting for. In early 1959 and early 1960 the situation had grown to an extraordinary thing of unusual proportion and under those circumstances we would want a ruling or stand of some kind on the part of General Motors Corporation. We did not have any at that time. That is why we had said at that time that there was nothing we could do about it. In [fol. 260] the Staley letter we had a stand established by the corporation as to our position. We had instructions from the general sales manager to discuss this matter with each of the dealers in the area where the activity was going on, from the standpoint of this relationship to the Selling Agreement, product good will and the dealer franchise system. That was as far as my authority went at that time.

As Assistant Zone Manager I do not have any authority to interpret the Dealer Selling Agreement, or decide what is or what isn't a violation. I do not have any authority to enforce that agreement in terms of telling a man he had better quit or his franchise will be terminated. We don't make the decision in the zone office as to whether a dealer will be terminated or cancelled. That decision is made in the central office. So we could have discussed this thing of violation of the Selling Agreement under the viewpoint of Mr. Staley's letter but the actual termination is not done at the local level. In the case of a violation of the Dealer Selling Agreement, I do not go and tell the dealer that he is about to lose his contract because he is violating it. We [fol. 261] are a service organization, in a sense a selling organization; we endeavor to point out to the dealer the advantages of having adequate facilities, or a sufficient number of men in the sales force, or sufficient number of

service technicians—the advantage from the standpoint of taking care of the owner and enhancing the dealer's profit. We counsel with the dealers. What we try to do is try to show the dealer the advantages to him and Chevrolet of doing the things that the contract requires.

[fol. 262]

MAX A. YOUNG

Designation by Plaintiff

My name is Max A. Young. I reside at 1828 S.W. Eagan Way, Lake Oswego, Oregon. I am at present Zone Manager of the Portland, Oregon Zone of the Chevrolet Motor Division of General Motors. I have held that position since January 1, 1962. Prior to that time, from July 1957 until December 1961, I was a City Manager in the Los Angeles Zone of the Chevrolet Motor Division. From September 1956 to July 1957 I was an Assistant City Manager in the Los Angeles Zone. I have been in the Chevrolet Motor Division for over 16 years as district manager, assistant zone manager, city manager and now zone manager.

Shortly after I arrived in Los Angeles in September 1956, I learned that new Chevrolets were being sold or delivered through discount houses in Southern California. I imagine that I discussed the subject with Mr. Hart who at that time was Zone Manager, but I can't recall any conversation. I believe I first discussed the subject of discount houses with Mr. O'Connor shortly after he became Los Angeles Zone Manager in early 1958.

[fol. 263] I learned about the discount house situation mainly from complaints of dealers who were in my geographic region. I can't recall the dealers who complained to me but quite a few of the dealers in the South Metropolitan Area and in the East Metropolitan Area which was the Long Beach area extending into Monrovia, Glendora, quite a few of those dealers had brought the complaints to my attention.

In about mid-year 1960, the discount house merchandising of new Chevrolets developed into what might be described as an acute problem. At that time it was a growing thing in terms of volume. In other words, there were more of these

cars being sold through the discount houses, practically every month it was growing. At least the complaints from the dealers stated that to be the truth. The dealers were bringing this to my attention with increasing emphasis and with increasing frequency. By around May or June of 1960 the Los Angeles Zone office was well aware of the nature of the discount house situation and the fact that many dealers were complaining in respect to it. This matter was discussed frequently with Mr. O'Connor and among the city managers themselves. During this period, Mr. O'Connor said that there was nothing the Zone Office could do in [fol. 264] respect to this situation, but that he intended to and would discuss this matter with his superior, Mr. Roy Cash.

In late December 1960 I received instructions from Mr. O'Connor to call Messrs. Bruder, Gwynn, Biggs, Porter, Newman and McClure and there may have been others. I called each dealer and talked with him in person to arrange an appointment for that dealer to meet with Mr. Roy Cash. I told each dealer he was going to meet with Mr. Cash, but did not tell them the subject matter of the meeting because I didn't know that.

In late December 1960 or early January 1961, I was instructed by Mr. O'Connor to call each dealer in my particular zone to discuss the Staley letter (Pltf. Ex. 121) with reference to whether they received the letter, and had they read it, did they understand it, and to get a brief resume of the dealers' thinking, of what their reaction was to the letter, and to our stand on this. I did, in fact, call each of my 35 dealers in person or by telephone.

Government Exhibit 141 is a handwritten report and has an invoice of Citizen's Chevrolet attached to it. I was given [fol. 265] this document by Ernie Porter at his dealership. He told me that this was a shopping deal that he had shopped. He found out that cars could still be purchased through discount houses. I took this back to the Zone office, showed it to Mr. O'Connor and called Mr. Newman of Citizens. I asked Mr. Newman to contact Mr. Porter and arrange to have the deposit on the car refunded.

In early 1961, Mr. O'Connor gave me some documents and a tape recording pertaining to an automobile delivered by Ed Priester Chevrolet to Russell De Orto. Mr. O'Connor

asked me to contact the Priesters and discuss this with them. I called Mr. Priester and his son and asked them to meet me at the zone office, which they did, and I played them the tape of the entire transaction. It was my understanding that one of the Associations, or possibly all three of them, were furnishing the money for the car. I asked Mr. Priester if he cared to re-purchase the car, and he wrote out a check for it right there on the spot. The check is made payable to Cameron Aikens. Mr. O'Connor instructed me to have it made payable to Mr. Aikens.

I had a substantially similar experience in connection [fol. 266] with the sale and delivery of a car by Allen Gwynn Chevrolet to a Mr. Huff through a discount house. I played the tape recording and I asked Mr. Gwynn if he would care to re-purchase the car. He said he would. I instructed him to make the check payable to Glenn Roberts.

I was also asked by Mr. O'Connor to contact Bob Wondries of Bob Wondries Chevrolet and discuss with him the particular situation involving a car sold to John Armour through Gemco. It was explained to me by Mr. O'Connor that the car had been shopped and paid for by Eddie Hopper Chevrolet. I had no tape recording on this transaction. I told Mr. Wondries that he could get the car back at the Eddie Hopper Chevrolet Company at Garden Grove. He gave me a check made payable to John Armour which was made out in his office while we were talking.

Mr. O'Connor also brought to my attention an invoice of Citizens Chevrolet made out to G. R. Wolfe covering the sale and delivery of a car. There were papers concerning this transaction and also a tape recording. Mr. O'Connor asked me to see Will Newman about this and I asked Mr. [fol. 267] Newman to come down to my office. I showed him the documents and I said, "Will, I would like to play this tape recording for you because I think it will be very interesting to you." I played the tape recording and asked him if he wanted to repurchase the car. He agreed to do so. He sent his check directly to Cameron Aikens.

Q. Mr. Young, before these four or five experiences we have gone over did you ever have occasion in your experience as a City Manager to ask a dealer to buy a car back?

A. No, not that I can recall.

Q. For no reason whatever?

A. No, sir.

Q. And did you ever have occasion before these experiences we have talked about in the early part of 1961 to call a dealer into your office and play a tape recording of a transaction which took place in his dealership?

A. No, sir.

Q. That was the first time you ever had occasion to do that?

A. That is correct.

Q. These experiences in playing the tape recorders and [fol. 268] asking the dealers to buy cars back was a rather unique experience in terms of your being a City Manager for Chevrolet Motor Division?

A. Yes, I think this form of merchandising through discount houses was unique to this area.

Cross-designation by All Defendants

When we have an established dealer and their Selling Agreement is about to expire and is going to be renewed, as it usually is, a letter is sent to the dealer informing him that as of a certain date his Selling Agreement will be renewed and a meeting with the dealer is arranged. At that time the new Agreement is presented to the dealer and for management's signature. We review the provisions of the Agreement with the dealer and any addenda. These are discussed with the dealer. The Dealer Selling Agreement is very seldom sent to the dealer for signature with a letter asking him to sign it and return it. There may have been cases when that has happened due to a time element or an illness element, in the case of a dealer being ill or something like that, but it is usually handled on a personal basis, because this is a personal agreement between the individual and the Chevrolet Motor Division.

[fol. 269] As City Manager in the Los Angeles zone I am quite "far down" in the organization hierarchy. I do not fix policies that have to do with interpretation of the Dealer Agreement, and neither does my boss, Mr. O'Connor. The way we operate, before we do anything new, we get authority from farther up the line.

In situations where a dealer is not conforming to his Agreement we have many many contacts with the dealer, usually by top management at the Zone level, and at times

Regional management at the Regional level, working over a long period of time in endeavoring to correct the problem existing at the dealership, whether it be facilities or whatever it might be. If after working with this dealer over quite a period of time we find that we are at an impasse, then through the Regional Office we inform our Central Office of the problem, and we at that time recommend that certain steps be taken. However, it is at the discretion of our management at Central Office whether they agree with this, and it has to come back down from them.

Q. Up to that point, are you trying—is it the policy of General Motors to follow a procedure of persuasion?

A. Oh, yes, sir. In other words, it is a lot easier for us, [fol. 270] actually, in our work to make a dealer into a good and profitable dealer by working with him than it is to replace him.

Q. Good dealers are hard to come by?

A. They certainly are.

In the case where a dealer does not maintain an adequate staff of competent mechanics I would first counsel with our Chevrolet Division Service Department to get their thinking with reference to the number of service technicians required in this dealership using the size and the service volume. I would also find out the amount of business that might be lost by the lack of trained service technicians. In other words, I would gather all the facts that I possibly could concerning this one phase of the dealer's business and then counsel with the dealer, see him, counsel with him on the advisability of strengthening this one department so that he could not only better serve Chevrolet customers and other automotive buyers' needs, but also the fact that this in itself would increase his possibilities for a return on his investment.

I would not go to the dealer and threaten him with cancellation of the Agreement or anything like that. I would [fol. 271] sit down and talk with him and counsel him. I can't recall the time when I have actually used the Selling Agreement such as mentioning the Selling Agreement. This Selling Agreement is not used as a weapon. It is an agreement between two parties, the Chevrolet Motor Division of the General Motors Corporation and an individual and in some cases two individuals or three, and these problems

that arise are brought to the dealer's attention in the manner of good business judgment from both sides. This is not an uncommon problem. We have these problems from day to day.

During the year 1960 there were many dealers who complained to me about dealers merchandising Chevrolets through discount houses. I recall that Ed Collian, of Collian Chevrolet in South Pasadena complained to me. He made the point that to him this was a wrong form of merchandising, and that it was a threat to his franchise as it was to every other Chevrolet dealer's franchise. It was siphoning off customers that possibly he could sell or another Chevrolet dealer could sell in the area, somebody who had his capital invested in facilities and so forth. He thought it was morally wrong to merchandise cars in this manner. His principal concern was that this form of competition posed a threat to his business. He was against this [fol. 272] type of merchandising and felt that it would prove a threat eventually to the franchise system as we know it.

1960 was the big year when the volume through these unauthorized outlets became of such a critical nature that we received so many complaints from so many dealers. It presented a very acute problem which was different. The handling of it was not clear. Rather than having just a problem which we handle day in and day out, such as our service problems, we were faced with the problem which was entirely foreign to anything we had run up against before, so we wanted an interpretation.

Before we received the Staley letters, I said that there was nothing the Zone people could do about the use by dealers of discount houses as outlets for their products because there was no policy as yet defined from the corporation with reference to this type of merchandising. This was a situation which was becoming acute in the Los Angeles area, and as far as we could discern it was only in the Los Angeles area, and we wanted a policy from the corporation which would guide us in our handling of it.

That is why we asked and did secure the policy from our Central Office. It was a matter which required a policy [fol. 273] determination by the Central Office. It was quite clear that it certainly wasn't in the best interest of the

dealers' equities as a whole, but we had to get a determination and interpretation of policy from our Central Office before we could do anything about it. It was not the prerogative of those at the Zone level to determine if it was a selling agreement violation. This had to be decided by higher authority.

The policy concerning this problem came by way of a letter, which all the dealers received as did the wholesale organization, and it was reviewed by Mr. O'Connor with management personnel of the Zone. This was a policy with relation to the Dealer Selling Agreement, with reference to unauthorized outlets.

This policy was transmitted to this area somewhere around December 16, 1960 by a letter from Mr. Roche, who was Vice President of General Motors Corporation, in charge of Distribution, at that time. It was followed by Mr. Staley's letter to all Chevrolet dealers, nationwide. This was a corporation policy. At this time we thought we had a track to run on.

Q. What do you mean by the track to run on?

A. Well, this was an interpretation of a policy with relation to the Dealer Selling Agreement, with reference to unauthorized outlets.

[fol. 274] Q. Well, now, in running on this track, I believe Mr. Blecher asked you if you told these dealers they were violating the Agreement?

A. Yes, sir, words to that effect.

Q. Did you threaten them with termination of their Agreements or refusal of General Motors to renew their Agreements?

A. No, sir.

Q. At the end, do you have any authority whatsoever to tell a dealer that General Motors is going to terminate his Agreement or General Motors is going to refuse to renew his Agreement?

A. No, sir, I don't.

Q. Where is that handled?

A. That is handled in our Central Office.

As I recall I called the dealers in my area of responsibility shortly after the New Year—the 2nd or 3rd of January. Mr. Staley's letter had been received in the latter part of December. This was a letter of policy of the Gen-

eral Motors Corporation which in effect was an addendum to the dealer selling agreement. It was at least an explanation of that portion of the Dealer Selling Agreement which dealt with unauthorized outlets—and I think that all the dealers in my conversations with them concerning Mr. [fol. 275] Staley's letter at least indicated to me that they understood that portion of the letter. I asked each one if he understood it—if he understood the wording. I said that this was our position—the corporation's policy—on the discount house method of selling. And immediately, of course, after a very short conversation I was able to obtain the dealer reaction. Which was very good.

Pltf. Ex. 166 refers to a sale of a new Chevrolet involving Citizens Chevrolet. I had a conversation about it with Mr. Newman but I don't recall any with Mr. Spoo, a salesman at Citizens Chevrolet. As I best recall, I think this was brought to my attention by Mr. Bill Newman with reference to how to handle this delivery. This became quite involved. The car was originally ordered through a discount house. It was built and shipped to Citizens Chevrolet and it was built in error. As I recall it, we had shipped a standard model when the order called for a deluxe model. There seemed to be considerable delay, and the customer wrote our Central Office complaining about the delay of the unit, and so forth. And when it was finally shipped to Citizens Chevrolet, Mr. Newman got in touch with me concerning the delivery of it.

[fol. 276] As I recall, at that time he was having some difficulties with his past business with discount houses, financial difficulties, and he said he no longer wanted any part of this business. However, the customer should be satisfied, what should we do? It was at my suggestion that we deliver it through a neutral dealer. Ernie Porter was the closest dealer so I called Mr. Porter and asked if he would make delivery of the unit.

I do not recall ever discussing the transaction involved in Pltf. Ex. 167 (an invoice of Citizens Chevrolet to Shir-lene Schoemann) with either Mr. Newman or Mr. Spoo. I have never heard of a man named Lex Jones. I have had very little conversation with Mr. Spoo other than to say good morning and I have no recollection of any discussion with Mr. Spoo concerning this business.

I played the tape recording for the Priesters because I wanted both Herb and Ed Priester to know how this thing was handled from the start of the transaction to the actual delivery at Montrose, and this one was a particularly interesting one, because this tape recording was the one where the discount house man had said that we were shipping direct, which of course we have never done; and there were quite a few of those statements made during this drive [fol. 277] from the discount house into Montrose which were quite interesting I thought to both the Priesters, and particularly to us, in how this transaction was handled.

When I was given the documents in each of these cases I was told to whom the money was to be paid in case the dealer wanted to repurchase the car. I believe Cameron Aikens, the payee, is counsel for many dealers, and for an association. I think it is Dealers Service.

The purpose of my playing the tape recording for Mr. Gwynn was to show the dealer exactly what was going on in his business, and particularly—I think this was a situation where they were even using his old building, which is only about three blocks away. It was called "The Brockway Plan," I think.

When I contacted Mr. Wondries, he was surprised and very irate that this had happened at his dealership, as I was, because Mr. Wondries was a new dealer. He became a Chevrolet dealer in the early part of December, as I recall, of 1960, and my contact with him with reference to this discount house purchase was, I think, some time in February, the latter part of January, the first part of February, and he was quite surprised that it had occurred at his dealership and, as I say, quite upset about it. I don't think he knew about it prior to my call. He had told me he had no intention of having his dealership use discount houses as outlets.

[fol. 279]

DARRELL V. HAWTHORNE

Designation by Plaintiff

My name is Darrell V. Hawthorne. I have been employed by General Motors since June 1934. From July 1960 to the present time (March 1963) I have been City Manager in the

Chevrolet Los Angeles Zone. In my position as a City Manager it was my responsibility to contact Chevrolet dealers in the West Metropolitan Area.

Prior to my coming to the Los Angeles Zone, I was not acquainted with Chevrolet dealers selling Chevrolet automobiles through discount houses and referral services. After I came here I became acquainted with it on a gradual basis. It was a process of education for me—primarily through complaints from some dealers who would from time to time call me to report that they thought a certain discount house was selling new Chevrolets. To the best of my recollection, John Hessell of El Segundo was one dealer that complained. I don't recall exactly what he complained about other than as I recall there was a discount house near his dealership in El Segundo through which new Chevrolets were being purchased.

Q. Well, did he complain to you that he was losing sales because of the presence of this discount house or referral [fol. 280] service around his dealership or in the vicinity of his dealership?

A. Well, as I recall, he felt that it was unfair competition from whoever the dealer might have been in some other area of the city.

Q. Well, did he explain what he meant by unfair competition in terms of how it was affecting the size of his gross profits or the number of sales that he made?

A. I don't recall exactly, because I don't recall the specific conversation, but to the best of my recollection it was on the basis that—it wasn't the grosses as I recall—it was the fact that people were buying cars that he wasn't even getting a chance at the deal, so to speak; in other words, they were being drawn to the discount house and away from his dealership as a place to even be a prospect for a new car.

Q. Well, did you understand at that time that all of the Chevrolets that were purchased through or from the discount houses and referral services were cars that had been obtained from other Chevrolet dealers?

A. Well, I naturally assumed that, because that is the only place we sell cars to.

[fol. 281] Q. So that each sale that he lost must have represented a sale that his competing Chevrolet dealer had obtained, isn't that correct?

A. Yes.

Q. And this is one of the things that he was complaining about?

A. He was complaining about the nature of the competition, yes.

Q. Pardon?

A. He was complaining, to the best of my recollection, of the nature of the competition.

Q. You mean he wasn't just dissatisfied because he lost the sale?

A. Because he lost the sale due to the nature of the competition.

The only dealers that were doing business through discount houses and referral services that I discussed it with from the time I took over in July 1960 until the end of 1960 were Mr. Biggs and Mr. Bruder. They were the only two dealers that to my knowledge were doing such business. I was interested in learning how this operation worked, so Mr. Biggs explained it to me. He said that he would be very willing to give up this referral business if it would accomplish anything and in his opinion the only way it would accomplish anything was that if he could be sure that some [fol. 282] other dealer would not just pick it up. To the best of my recollection my contact with Mr. Bruder was quite brief, because I had already learned from Mr. Biggs how the referral business worked; and Mr. Bruder's reaction, as I recall, was virtually identical to Mr. Biggs', that he, too, felt that it had gotten to the point where he would be very willing to give it up if some other dealer didn't just turn around and pick it up and therefore nothing was accomplished to the solving of the overall problem. In my conversations with Mr. Biggs and Mr. Bruder in the fall of 1960 I don't believe I discussed their respective business relationships with the independent business, Dealers Diversified Services, Inc. (Fedco) in terms of the dealer selling agreement.

I discussed the subject of discount houses and referral services with Mr. O'Connor, the Zone Manager, to whom I was immediately responsible.

These various conversations were frequent during the fall of 1960.

Q. Do you recall conversations in which he said that there was essentially nothing that Chevrolet Division could

do except try to persuade them to discontinue this type of business relationship?

[fol. 283] A. That's correct, as I said before, our approach was one of persuasion, to sell a viewpoint.

In early January 1961 I attended a staff meeting of Mr. O'Connor's immediately subordinates at which we discussed the Staley letter.

Q. Did you receive instructions from Mr. O'Connor with respect to contacting the dealers in your geographical area of responsibility on the subject of discount house and referral service selling?

A. Yes, sir, on the subject of Mr. Staley's letter.

Q. Were you directed to take up the subject matter of the Staley letter with the dealers in your Zone, in your area of responsibility?

A. Yes, we reviewed particularly the paragraph which stated that the wholesale people would contact all of the dealers in the area where this type of business was known to exist. So, as I recall, we discussed how best to do that and decided that we would for the most part telephone our dealers.

I contacted the approximately 22 dealers in my zone by telephone.

Q. In those conversations with the Chevrolet dealers in your zone what did you say to them? Did you have a sort of format as to the points you wanted to cover in your [fol. 284] discussion with them.

A. Yes, I believe so. I had nothing in writing on a format, but in each case I talked to the dealer himself; in each case, No. 1, I asked if he had received Mr. Staley's letter; No. 2, if he had read it; No. 3, if he understood it or if it made our position clear to him; and then how he felt about it.

Of course, as I said, to my knowledge I only had two dealers who had been selling through discount or referral services, so that the other 20 dealers, without exception, stated that they were not engaged in this type of business and had no intention to be engaged in it.

When I was contacting each of the Chevrolet dealers in my zone of responsibility right after the Staley letter, I knew and understood that each of the other City Managers was doing exactly the same thing.

Q. Didn't you know and understand that a hundred per

cent cooperation in discontinuing this discount house business was essential to the success of the program to end this type of selling of Chevrolet automobiles?

A. Essentially, yes.

One of my 22 dealers that I called was Vern Trider of [fol. 285] West Adams Chevrolet who told me that he was not engaged in any of the business of the type covered by Mr. Staley's letter. Then I believe it was later in the same month I was advised by Mr. O'Connor that Mr. Trider had been shopped. As I understood it at that time, someone had posed as a customer and had made a deposit on a Chevrolet which he had gotten through an original contact with Fleet Sales. Mr. O'Connor turned over to me a receipt and also an invoice or something from Fleet Sales in connection with that transaction and asked me to explain to Mr. Trider that this was a shopped deal, that there would be no consummation of a car purchase, and as I recall there was a \$25 deposit made, and that we could ask Vern Trider to, in view of the circumstances, if he would refund the \$25. As far as I know, the shopping had not been performed by Chevrolet Motor Division. After I explained the transaction to Mr. Trider he agreed to my request to refund the \$25. As I recall I again directed Mr. Trider's attention to the Staley letter, and he said in effect he was willing to discontinue his referral business through Fleet Sales, providing he could satisfy himself that other dealers were not doing this type of business. I don't recall indicating to Mr. Trider that everybody else was going to abide by Mr. Staley's letter. He was not interested in what [fol. 286] I had done with other dealers or talked to other dealers. The way he presented it to me was, "I want to satisfy myself."

He told me that he would give an answer within a few days and he subsequently called me and said "I have satisfied myself that other dealers have discontinued this business and as of right now I am no longer doing business with Fleet Sales." At that time as far as I knew I had no dealers that were engaged in business relationships with discount houses and referral services.

Sometime in late January or early February I received a call from Mr. Ted Schonlaw. His first words were, as I recall—I do recall almost the exact words in this instance because it was so new to me—he said, "Dick, I think I have

been shopped." So the gist of the conversation from then on, I asked him what he meant and why, and he explained that a car had been delivered and had been paid for by a cashier's check in the full amount, which he thought was rather unusual, and he told me that he had called the bank, I believe it was the branch in Long Beach, to determine who had bought the cashier's check and found that it was Losor Association. So on that basis he assumed that he had been shopped; however, he immediately wanted me to know two things, and that was that his organization, [fol. 287] he and his organization, the management were very much adverse to this type of operation, that it was done without his knowledge or the knowledge of his managers, and he immediately asked, "Should I buy the car back or what should I do?" He offered to buy the car back. I told him, "Do nothing, but I'll see what I can find out and let you know." He asked me, as I recall he asked me, "Do you want me to buy the car back?" or, "Should I buy the car back?" or, "How can I buy the car back," something to that effect, and I told him frankly I didn't know, I didn't know anything about it. I said, "It appears that you have sold a car." Right after that conversation I advised Mr. O'Connor of this call and to see if he knew anything about it, and as I recall, at that time he didn't and he said there is nothing to do unless we hear further.

In a matter of a few days, maybe within the next two or three days, I believe Mr. O'Connor, as I recall, showed me the papers to the car and also gave me the key to the car and told me that Ted was right on his previous call, Ted Schonlaw, and that he had been shopped. I at that time again advised Mr. O'Connor that Ted Schonlaw had called me and had offered to repurchase the car if he had, in fact, been shopped. So Mr. O'Connor said, "Well, go [fol. 288] ahead and contact Ted," and told me where the car was, and if he still wanted to repurchase it, that the check could be made out, and so on.

Mr. O'Connor gave me some papers in connection with the purchase of a shopped automobile from Kendall Chevrolet Company. The purchase had been made through the Car Wholesalers out in the San Fernando Valley. O'Connor advised me to contact Mr. Deeb, the dealer, inasmuch as he had expressed to me that he was very definitely against and discount house business. I went to Kendall Chev-

rolet and showed Mr. Deeb the signed copy of the purchase agreement. When I told him the car could be repurchased if he was so inclined, he offered to do so immediately. Mr. Deeb did not complain when I told him to make out a check to repurchase the car for \$205 more than he sold the car for.

Cross-designation by All Defendants

The first car purchased by Losor in their shopping program was the one purchased from Mr. Schonlaw. The check that I obtained from Mr. Schonlaw on his repurchase of the car was dated February 27, 1961. Pltf. Ex. 183 indicates that Losor's purchase was made on February 21, 1961.

[fol. 289] I can't say whether Ted Schonlaw called me on February 21, 1961, concerning what he should do about the car, other than to say that he called me immediately after finding out that the check was issued by Losor. At that time I hadn't heard anything about any project of Losor to shop dealers. When he asked me what to do about the car, I told him that Losor had bought a car or words to that effect. I was not in any position to tell him to take any action.

Mr. O'Connor may have told me that he had received a set of papers from Ted Schonlaw on this transaction before his meeting in his office with Henson, Johnson and some others, but I am not sure. He may have. At any rate, sometime at or just before February 27 Mr. O'Connor told me to call Schonlaw and take him up on his offer to buy back the car.

When I talked with dealers back in 1960 before receiving the announcement of the Chevrolet policy set forth in Mr. Staley's letter, and told them that there was nothing Chevrolet could do about this discount house operation, I meant there was nothing that we at the Zone level could do. I wasn't presuming to say what General Motors Corporation or the Chevrolet Division of General Motors Corporation could do in respect to dealers selling through [fol. 290] discount houses and referral services. We just hadn't heard what the Central Office wanted to do or what it would be their policy to do—until we saw the Staley letter.

When I talked with Mr. Biggs, before we received the Staley letter, I was interested in learning how this operation worked, so Mr. Biggs explained it to me, explained how the referrals worked and the entire transactions, how they were handled. Then, he volunteered to show me figures on whatever month it was—that month's business—the average grosses, etc. Then I discussed with him, just like we would in any other facet of his business, the advisability in the long run of continuing this type of business, and Mr. Biggs, to the best of my recollection, informed me that it had grown to such proportion that he realized in the long run it would be detrimental to the entire franchise system of automobile business; however, he felt that, as I recall he said that if he alone gave it up and some other dealer picked up where he left off, nothing would be accomplished. He said that he would be very willing to give up this referral business if it would accomplish anything and in his opinion the only way it would accomplish anything was that if he in his own mind could be sure that some [fol. 291] other dealer would not just pick it up.

Pltf. Ex. 142 is a letter dated March 3, 1961, by Bob Erskine of Bob Erskine Chevrolet in Pomona, California, written to Mr. O'Connor with a copy to Fritz Bruder advising that a car had been delivered on January 19, 1961 by Bruder Chevrolet in Hollywood through Fedco in San Bernardino to a resident of La Verne, California.

Mr. O'Connor either gave or sent me this letter. Before I had a chance to call Mr. Bruder he called me and told me that he had a conference with Mr. Cash while I was on vacation and had advised Mr. Cash that he was going to deliver the cars that he had on order at that time and this was one that was on order. My handwritten note at the bottom of Pltf. Ex. 142 was to advise Mr. O'Connor of this. I was under the impression that Mr. Bruder's conference was with both Mr. Cash and Mr. O'Connor.

With the volume of cars that the dealer handles in the metropolitan area and the number of salesmen that they have, it is very possible that an individual salesman could have a contact of some kind or another without a dealer's knowledge, and as far as I was concerned this was a matter of information to Mr. Bruder.

[fol. 292] When I called on Mr. Deeb at Kendall Chevrolet concerning the sale through Car Wholesalers, he was very

surprised and very irritated at whomever it was in his organization that had handled that transaction. The reason was, to use an expression, because Mr. Deeb was dead set against this kind of business. After I showed him the papers and explained what had happened, he called his general manager, Mr. Constantine, to the office to determine if he knew about this deal, and determine if that type of business was being done in the dealership—if he knew if it was. And as I recall, Mr. Constantine also expressed surprise. And then, in turn, Mr. Deeb called a third man, and I don't recall his name, who was an assistant sales manager, to determine if he knew about this deal.

[fol. 293]

FRED M. THOMPSON

Designation by Plaintiff

My name is Fred M. Thompson. I reside at 534 South Hauser Blvd., Los Angeles. I am a City Manager, Chevrolet Motor Division in Los Angeles. I have been affiliated with the Los Angeles Zone since July 1958. I am completing my thirty-first year with Chevrolet Motor Division.

As a City Manager I am responsible for a certain number of dealers who are more or less under my supervision. Between June 1960 and July 1961 I was responsible for about 22 dealers. The Los Angeles Zone is Chevrolet's largest in terms of total units delivered.

In the middle of 1960 we started getting an avalanche of complaints from dealers about discount house and referral service merchandising. I had dealers talk to me about discount houses. Mr. O'Connor indicate that there was nothing that the Zone Office was able to do about the complaints in regard to the discount house method of merchandising. I believe he mentioned that this was something he was going to discuss with Mr. Cash or with other of his superiors.

[fol. 294] On November 17, 1960, Mr. Mays talked with me by telephone in Mr. O'Connor's absence on the subject of discount house operations in our area (Pltf. Ex. 17, memorandum of this conversation). He requested Mr. O'Connor to immediately send him a detailed report of

discount operations in this area and specifically requested information as to the dealers who were furnishing merchandise to the discount houses, as well as what action we in the Zone were taking to curb such sales. He stated that this matter had apparently reached such proportions that Central Office wished to review the entire matter possibly with the legal department to see if they could be of some assistance to us in this connection.

Upon my return from a vacation either the 2nd or 3rd of January 1961 we had a conference in Mr. O'Connor's office, at which time Mr. Staley's letter to all dealers was reviewed, and Mr. O'Connor instructed each of us, in accordance with Mr. Staley's letter, to call all of the dealers in our area. At best as I recall, I asked each dealer as I talked to him, or the general manager, if they had received Mr. Staley's letter, and if there was anything that they didn't understand we would try and be of assistance to them in getting an answer for any question they might [fol. 295] have. After calling these dealers I was instructed to report back to Mr. O'Connor. He wanted us all to let him know when we completed contacting all of the dealers.

Around the end of March 1961 I talked with Mr. Watkins, General Manager of Enoch Chevrolet, with respect to a Chevrolet sold by Enoch Chevrolet through a discount house. Mr. Cashman, the owner, didn't happen to be in at the time I called, and that's why I talked to Mr. Watkins. This matter had been called to my attention when I was at Harbor Chevrolet, which at that time was in my area, and either Mr. Henson or Mr. Johnson told me that they had one or two tape records and some papers on I believe two or more shopping matters, and asked me if I would mind taking them to the Zone Office. I understood that the Losor dealers were conducting this shopping activity. I believe I understood that the documents or other evidence obtained through this activity were to be turned over to the Chevrolet Zone Office, as I believe there had been transactions previous to these.

When I talked to Mr. Watkins he indicated that Mr. Cashman would be down to see me. He was sure that such a conference could be set up. When I talked to Mr. [fol. 296] Watkins and asked him to set up the conference with Mr. Cashman he asked me if I would tell him what it was about, and I did tell him. He asked me if I would

give him the serial number of the car so that they could run down the transaction and be familiar with it at the time they came into the office.

When Mr. Cashman and Mr. Watkins came into the office there were the usual greetings and, as I recall, before we played the tape recording Mr. O'Connor walked by the office and did come in and shake hands with Cashman and Watkins. Mr. O'Connor did not remain in the room. Then I played the tape recording of the shopped transaction which I had obtained from Mr. Henson.

Q. When the tape recording was concluded, did Mr. Cashman appear at all embarrassed to you?

A. I would say so, yes, sir.

Q. So that, after playing this tape recording to which you have testified Mr. Cashman appeared embarrassed, no doubt you asked him a question, did you not?

A. I believe that I did. I believe I asked him if he wished to buy the car back.

Q. And what did he say to you, Mr. Thompson?

A. As I recall, he said he certainly did.

[fol. 297] Q. And Mr. Thompson, did you expect him to say, "No"?

A. No, I don't think I did, no, sir.

It would appear from the documents related to the transaction that Mr. Cashman was paying more to repurchase this automobile than the amount of money he received when he sold it. I do not recall that Mr. Cashman voiced any objection to me with respect to the fact that he was buying an automobile back for more than he had sold it for.

Cross-designation by All Defendants

My purpose in playing the tape recording was not to put Mr. Cashman in an awkward position. Both Mr. Cashman and Mr. Watkins told me that the car sold by Enoch Chevrolet through the discount house was sold without their knowing about it.

My purpose in using this technique wasn't to put Mr. Cashman in an awkward position or to put his back up against the wall—so to speak. To the best of my knowledge there were no dealers in the area that I was responsible for that were selling through discount houses. When this matter was brought to my attention, I was quite sure in my own mind that if a car had been sold by Enoch Chevrolet

in that manner, that it was sold without Mr. Cashman's [fol. 298] knowledge, and I asked him to come down to hear the tape recording and to see the papers in connection with it.

[fol. 299]

THOMAS O. MAHON

Designation by Plaintiff

My name is Thomas O. Mahon. I am an automobile dealer in Ojai, California. The name of my dealership is Tom Mahon Chevrolet, Inc.

In 1961 I began doing business with a discount house called AAAA Auto Leasing. I first began doing this business about two months after I received the letter written by Mr. Staley to Chevrolet dealers in the latter part of December 1960 (Pltf. Ex. 121).

The way we sold cars to customers that came to AAAA was: They would notify us of the person who was to obtain the car, either by phone or by mail, and we would order the car, obtain the car, then prepare the car, make it ready, and register it to the individual. AAAA Auto Leasing paid us for the automobile. Delivery of the automobile was made to the customer who would either come up to our dealership to obtain it or otherwise a driver would come up to the dealership and obtain it from us.

In March 1961 I received a call from Mr. Jere Faust, Assistant Zone Manager who has charge of our area. The [fol. 300] substance of the conversation was that we had sold automobiles to AAAA Auto Leasing, that they were a discount house, and then he specified a sum of money which I was to bring with me when I came down and saw him. When he spoke I think he was speaking on the assumption that we knew we should not be selling to discount houses. He told me to come to Los Angeles on a specific day and at a specific time and to bring a cashier's check for a specific amount of money. I kept the appointment and brought a cashier's check. I knew when I came down to Los Angeles that I was going to repurchase an automobile but the peculiar part about it was he didn't ever ask for the check. I gave him the check before I left.

When I got to Mr. Faust's office, the substance of the

conversation was that AAAA Auto Leasing was a discount house. I believe it was mentioned by Mr. Faust that there had been a meeting in Santa Barbara, which I did not attend, where a list of the organizations that were discounting cars was read off, and AAAA Auto Leasing was one of the organizations on that list. We undoubtedly talked about many other things.

I can't say whether or not Mr. Faust said that we were [fol. 301] not to do business with the discount houses on the list. I knew that he did not want me to do business with them, and I believed he was speaking for Chevrolet. My impression when I left was that this was their desire. From Mr. Faust's point of view I was not to do business with any of the discount houses.

Q. Did he specifically tell you that he did not want you to do business with AAAA Auto Leasing?

A. I would assume so. I mean that was the organization with which we were dealing at the time.

Q. Did you later follow his instructions?

A. We stopped our dealing with them, yes, sir.

I asked Mr. Faust about delivery of the cars that were on order from AAAA Auto Leasing. He told me he did not wish us to deliver them. We followed his instructions with respect to those pending orders. We contacted AAAA first on the matter and they made no objection to it, so I felt released from the obligation to them, and we did not ship them.

[fol. 302] Our firm sold a car to a Russell De Orto who I learned had purchased the car representing I believe an automobile association. I paid \$2,904 to Mr. Faust when I repurchased the car. When I sold it through AAAA Auto Leasing I received \$2,660.93. On repurchasing the car I took a loss of \$243.02. After I repurchased the car we resold it as a used car.

[fol. 303]

[File endorsement omitted]

[fol. 304] APPENDIX B TO REPORTER'S TRANSCRIPT OF
PROCEEDINGS—Filed June 1, 1964

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil No. 62-1208-CC

STIPULATION OF FACTS NUMBER SEVEN

Plaintiff and each of the defendants, through their respective counsel, hereby stipulate as follows:

1. That the designations and affidavits hereinafter described in this stipulation are contained in two volumes [fol. 305] marked "Defendants' Designations and Affidavits, Appendix B and Appendix C to Reporter's Transcript of Proceedings"; that the persons whose testimony is contained in said volumes in the form of designations, cross-designations, affidavits and cross- and re-direct examinations of affiants would, if called as witnesses, testify to the facts set forth therein.

2. That the designations, cross-designations, affidavits and cross- and re-direct examinations of affiants covered by this stipulation may be offered into evidence and when received shall be deemed to constitute a part of the Reporter's Transcript of Proceedings herein (without the necessity of the Reporter copying the same into the Reporter's Transcript) with the same force and effect as though the witness whose designation, cross-designation, affidavit or cross- or re-direct examination of affiant is received had testified in person; that the testimony so received shall be governed by the same rules and treated in the same manner as though the witness had testified in person and that said designations, cross-designations, affidavits and cross- and re-direct examinations of affiants shall be referred to hereinafter as "Appendix A and B to Reporter's Transcript of Proceedings."

3. That said designations and cross-designations are [fol. 306] are agreed statements in narrative form taken from the Reporter's Transcript of the testimony of said witnesses in *United States v. General Motors Corporation*,

et al., Criminal No. 30132, in the above entitled court, or are questions and answers copied from the Reporter's Transcript in said action; that said designations were selected by one or more of the defendants as indicated and that said cross-designations were selected by plaintiff; that the affidavits were prepared for one or more of the defendants as indicated.

4. It is expressly understood and agreed that:

(a) This stipulation is for the purpose of the above-entitled case only;

(b) Plaintiff and each defendant reserves the right to object to the receipt into evidence of any fact herein stipulated on any ground or grounds.

Dated: May 20, 1964.

Maxwell M. Blecher, Robert C. Weinbaum. By Maxwell M. Blecher, Attorney, Department of Justice. [fol. 307] O'Melveny & Myers, Lawler, Felix & Hall, Aloysius F. Power, Robert A. Nitschke, Nicholas J. Rosiello, Homer I. Mitchell. By Homer I. Mitchell. Hansen & Dolle, Glenn S. Roberts, Victor R. Hansen. By Victor R. Hansen, Attorneys for Defendants.

It is so ordered this 1st day of June, 1964.

Charles H. Carr, United States District Judge.

[fol. 308]

CHARLES MILLER

Designation by All Defendants

My name is Charles Miller. I reside at 1172 Glen Arbor Avenue, Los Angeles 41. I am a car salesman employed by Ernie Porter Chevrolet, 245 West Colorado, Pasadena. I have been continuously so employed for the past seven years. During the years 1960 and 1961 I held the title of Fleet Manager. The Fleet Manager primarily handles sales to fleet accounts and accounts of the type which could be

called pseudo-fleet accounts; in other words, group selling or group buying which would fall under the category of fleet sales. During that period of time my immediate superior was our General Sales Manager, Mr. William Vogan. I reported directly to him and he in turn reported to Mr. Porter, the dealer.

During 1960 I did business with Castle Sales, Inc., the auto concessionaire located at the More, Incorporated, discount houses. The man handling the automobile business in these particular discount houses was Mr. Joe Enright, and I had fully equipped him with documents and purchase orders to sell Chevrolet automobiles. He filled in the purchase order and mailed it to me with the customer's deposit. It was then up to me to either order the car from the factory and deliver it after the car arrived at the dealership, or to select a car in inventory that would come closest to the model and equipment chosen. The vehicle was delivered to the customer at our agency in Pasadena.

Sometimes Castle Sales referred customers directly to me without having quoted any price. These referrals would come from certain stores of More, Incorporated, where Castle Sales was using one of the More, Incorporated, employees or a receptionist to send customers to me on a referral basis. The headquarters of Castle Sales, where Mr. Enright was employed, was on Sepulveda Boulevard in Culver City, and later on, in the late summer or fall of 1960, was moved to a new location on Van Owen Street in Reseda where More, Incorporated had opened a new discount house. Mrs. Enright then handled the business at Culver City. I got referrals from the Garvey store on Garvey Boulevard, and in a very few instances from the Long Beach store.

Def. GM Ex. AJ is a pad of forms containing a cover on which is imprinted "Chevrolet," with a Chevrolet symbol, "Retail Order Forms (15 Triplicate Sets)." On the bottom of the cover is printed "Form DEA-193 (11-60)." I have seen order pads identical to these before. These pads contain the Chevrolet Retail Order Form that a salesman used in selling an automobile during the year 1960. He would [fol. 310] mark the name of the dealership in there, the name of the purchaser, his address; and it says here "Please enter my order for the following: New car, used

car, new truck," etc., "Year, Make, Series, Body Type, Color, and Trim," These forms were used by the retail salesmen at Ernie Porter Chevrolet in selling new cars to the public. The salesmen would fill in the blank under "Dealer's Name" by inserting "Ernie Porter Chevrolet." The dealer obtained these forms from Chevrolet where they were furnished by some organization at the wholesale level. During 1960 I furnished tablets of this type of retail order form to Mr. Enright out at the More, Incorporated store at Culver City. He used these in taking orders from the customers. He would quote the price, he would insert the various accessories or options, the model, the selling price, the total price, the sales tax, etc. He would ask the customer to sign the copy, he would show our dealership's name up where it says "Dealer's Name." He would there insert "Ernie Porter Chevrolet" the same as a retail salesman would. Then he would mail me the signed original order. He would give a copy to the customer and would retain the onionskin copy for himself.

Our agreement with Mr. Enright was that he had authority to make a sale for us and bind Ernie Porter Chevrolet. [fol. 311] Any obvious mistake which he might have made in taking the order I had to correct, but the order itself without any mistake I considered binding, and I filled all of his orders to the best of my ability. Mr. Enright would sign his name in the blank on Def. GM Ex. AJ at the bottom of the form below the words "Accepted By." Immediately below this signature blank the form contains the words "Dealer or His Authorized Representative." Mr. Enright and I agreed on the price that he would use in filling out these orders, because otherwise, naturally, I couldn't check on any mistake which may have been made in the order. To my recollection, I have never refused to honor an order that he sent me. Mr. Enright was not authorized to sign checks for Ernie Porter Chevrolet but in any case where he had taken a deposit and the deposit was still in his hands, he was authorized to make a refund. In cases where he had transmitted the money to our agency, the refund had to be made by us.

During 1960, I visited the Auto Department operated by Castle Sales at More, Incorporated discount house store in Culver City at least three times, and possibly four.

My purpose in going to the store was to talk to Joe Enright. I found him in a display area to the left of the main entrance to the store. In the center of that display [fol. 312] area there was a new automobile, and surrounding it were partitions, shelves and tables covered with automobile brochures and literature pertaining to various makes of automobiles. Back of this area in a booth there was a desk and Mr. Enright sat at this desk. There were pictures and signs pertaining to all makes of cars on the walls. Among the brochures displayed there were some containing pictures of Chevrolets. There was quite a large number of what we refer to as throw-away brochures or literature. The automobile on display varied from visit to visit. I remember seeing a Plymouth at one time and at a later visit a foreign car. I never saw a Chevrolet displayed.

Def. GM Ex's. AB, AC, AD, AE, AK, AL, AM, AN and AO are brochures which were furnished to Ernie Porter Chevrolet by the Chevrolet Motor Division for use in selling Chevrolets in 1960 and 1961. I furnished a large number of these brochures to Castle Sales and Joe Enright and he made them available to the public in More, Incorporated stores in much the same fashion as they were available in a dealership.

Def. GM Ex. AF is a plastic-covered album with a picture of a 1960 Chevrolet and the words "1960 Chevrolet Fingertip Facts" on its cover. Def. GM Ex. AG is a larger-size, plastic-covered album having the same picture on its [fol. 313] cover as well as the words "1960 Chevrolet." These are books which were issued by the Chevrolet dealer to his sales force, to each salesman if possible. The larger of the books is called the Album. It contains the picture and technical information of each model car. It also contains color charts of the available colors that these passenger cars came in, both in two-tone combinations and in solid colors. The Album also contains samples of the different-colored upholstery available in each model. It was a very important selling tool to the salesman in that it helped the public select the proper color and the interior fabric of the car intended for purchase. It was particularly helpful where a car of that type and color was not available in the showroom. The purpose of this Album was to enable the salesman to show the customer just what various models

were available in Chevrolets and to help such customer select the particular color and particular fabric which he might prefer over others. This gave the salesman a way of showing the customer what was available without having on display all the various automobile combinations that Chevrolet produced.

The purpose of the book called "Chevrolet Fingertip Facts" (Def. GM Ex. AF) was to give the salesman all of the involved, difficult to attain and memorize technical information that a customer might ask him about—various ratios, various transmission features or availability of certain options on certain models and combinations with different engines, etc. Any salesman would have referred back to this book when asked a question to which he did not know the answer.

I made copies of both the Album and the "Chevrolet Fingerprint Facts" available to Mr. Enright at the Castle Sales concession in the More stores in 1960. Mr. Enright insisted on having these two books available on his desk because it would have been impossible for him to discuss color or upholstery without their aid.

Def. GM Ex. AH is page 31 of the March 10, 1960 issue of the Buyer's Digest. I had a complete copy of this particular issue of the Buyer's Digest. The picture on the bottom half of this page is of a 1960 model Chevrolet. Above the pictures is a script which reads "60 Chevrolet—Everybody's Kind of Elegance." Then we have the picture of a 1960 Chevrolet Impala and underneath we have a description of the car saying: "Nearest to Perfection a Low-Priced Car Ever Came! In '60 Chevrolet is elegantly new . . . with handsomely tapered lines" and so forth. Underneath it, it says: See MORE for the complete new 1960 lines of most other makes and models. Representative at Sepulveda store. Other "stores: Ask at referral desk," [fol. 315] and then the name of the company, "More, Inc.," with their four different locations and their addresses and telephone numbers.

Def. GM Ex. AI is an invoice dated March 21, 1960 from More, Incorporated to Ernie Porter Chevrolet, attention Charles Miller. I received it in the mail. The typed-in portion under "Description," which reads, "Your portion of one half page advertising in Buyer's Digest March 1960,

amounts \$150," refers to Ernie Porter Chevrolet's portion of the ad that I have just described in the Buyer's Digest. Upon the request of Mr. Joe Enright we agreed to put an ad in this particular issue, and I told him that we were willing to pay for part of the expense. To the best of my recollection, this is 50% of the expense. This invoice represents a bill to Ernie Porter Chevrolet by More, Incorporated for payment for this BUYER'S DIGEST ad. The bill was paid by Ernie Porter Chevrolet.

During 1960 I was also doing business with Fleet Sales Company located on Crenshaw Boulevard. I dealt with Virgil Dunn and Jim Fahy. The method of operation by which I sold cars to customers referred by the Fleet Sales Company involved my receiving in the mail a piece of paper called a wholesale purchase order, which contained [fol. 316] prices, equipment and designation of the model desired by a customer whose name appeared on the purchase order. The customer would receive a copy of the same document on which the prices were not legible and my obligation, then, and my instructions were to contact this customer by telephone and make an appointment and, when he came to my office, to show him a copy of the referral slip and compare it with his copy so that we would see the actual price quoted by Fleet Sales. He actually came to the dealership before he got the price. When the customer came to me and discussed the car, I gave him a single price and it was a take-it-or-leave-it proposition. I was instructed by the two gentlemen at Fleet Sales to be very brief, very short, almost to the point of rudeness to the customer and impress upon him in that way that he had to make the purchase right now, and that he had no chance to go back. In other words, it was a type of gimmick selling. I was instructed to be exceedingly brief and overbearing in my attitude. They told me that it was important that the customer receive one price and that there be no dickering about the price. To the best of my knowledge, during the year 1960 I sold 53 cars to people referred by the Fleet Sales Company.

I furnished literature, brochures, fingertip guide and the album to Fleet Sales also. I made it a habit at the begin-[fol. 317] ning of the model run to make a visit to these accounts and bring literature out and let them pick out what

they requested or thought they needed. I did not furnish this literature in bulk to the Fleet Sales Company for distribution to the public because they didn't request it like Mr. Enright did.

Cross-designation by Plaintiff

Mr. Vogan instructed me to stop doing business with Fleet Sales Company and Castle Sales in late December 1960 or early January 1961. At the time Mr. Vogan talked to me, he showed me a letter written by Mr. Staley and told me that we would have to discontinue doing business with those accounts. He said it was Mr. Porter's decision to discontinue doing business with them. He did not say that Mr. Porter's decision was based on that letter.

I subsequently discussed the matter with Mr. Porter who told me he had talked to Mr. Cash at the Zone Office. Mr. Cash had asked Mr. Porter what he thought of selling through discount houses and before the conversation could carry any further, Mr. Porter told him that he disliked doing business with them, that he had always thought so, and that he would right there and then make a decision not to tolerate any such dealings by employees of his agency.

[fol. 318] I spoke with a representative of Fleet Sales, and Mr. Enright of Castle Sales and told each of them that our business connection had come to an end, and in early January 1961, I had ceased taking new orders from them.

To the best of my knowledge, I sold 53 cars to people referred by Fleet Sales Company during 1960, and I sold between 95 and 100 automobiles to customers referred by Castle Sales during that period.

I suggested to Mr. Vogan that we have somebody call Fleet Sales to see whether he was still able to buy a Chevrolet, and I suggested we use my cousin, Mr. Teacher, who was not employed at our dealership. I suggested that he call Fleet Sales on the telephone and go through the process of placing an order for a Chevrolet. He actually did go through the steps of obtaining a referral from Fleet Sales Company. Fleet Sales referred him to West Adams Chevrolet where he placed a deposit on a car. To the best of my recollection, Mr. Teacher told me he used his own money, and I later learned this money was refunded by Ernie Porter Chevrolet. The documents obtained on this referral

were brought back to Mr. Vogan and me, and Mr. Vogan then took the documents and I don't know what he did with them.

[fols. 319-320] Inez Oelwein, sister of my secretary, shopped for a Chevrolet at Castle Sales. I don't remember being told that the documents obtained when Miss Oelwein and Mr. Teacher shopped Fleet Sales and Castle Sales were in fact turned over to representatives of General Motors Corporation.

The name Ernie Porter Chevrolet does not appear on any of the brochures, "Fingertip Facts," "Albums," order forms, or other literature supplied by Ernie Porter Chevrolet to Castle Sales or Fleet Sales.

[fol. 321] AFFIDAVIT OF WALTER H. FURNESS

Walter H. Furness, being first duly sworn, deposes and says:

1. Between the dates of August 20, 1960 and January 10, 1961 I was employed as an automobile salesman in the Automobile Department of the Consumers Mart of America discount store, 1440 S. Los Angeles Street, Anaheim, California (hereinafter referred to as "CMA"). My employer was Union Car Sales, an independent organization which operates the automobile concession at CMA pursuant to an arrangement with said store.

2. During the term of this employment the physical premises of the Automobile Department at CMA were located in the main store building and consisted of an open floor space of the approximate dimensions of 30 feet by 60 feet. Lined along one perimeter of this open area were seven salesmen's desks. On top of each desk were several stacks of new car sales promotion literature, including brochures promoting new Chevrolets (Def. GM Ex. AB). All this literature was freely available to customers browsing through the Automobile Department. In addition, each salesman had a copy of the Chevrolet Album, Color and Fabric Guides and Fingertip Facts (Def. GM Exs. AC, AD [fol. 322] and AE). This material was kept in the salesmen's desks and was not given to customers, but it was

brought out for use as a selling tool during negotiations with prospective customers. All of the Chevrolet brochures, as well as the album material, were furnished by Citizens Chevrolet to Union Car Sales. The remaining area of the Automobile Department contained a display of three automobiles. While the makes and models of the cars displayed varied from time to time, I recall that immediately after the inauguration of the 1961 model lines, the cars displayed were a Chevrolet Corvair, a Ford Falcon and a Mercury Comet.

3. As an automobile salesman, it was my job to discuss with prospective customers the terms and conditions on which new automobiles were available for purchase by them. Where agreement on such terms and conditions was reached with a customer, I would take a deposit and prepare a Union Car Sales sales order setting forth the agreed terms and conditions and obtain the customer's signature thereon. I would also have the customer sign in blank a power of attorney authorizing the registration of the vehicle in the customer's name. I would tell the customer that it would take a certain period of time to effect delivery and that I would call him when the car was available.

[fol. 323] 4. Union Car Sales had an arrangement with Citizens Chevrolet Co., Eagle Rock, California, pursuant to which Citizens Chevrolet agreed to furnish new Chevrolets for customers who placed orders for such vehicles at CMA. Under this arrangement, Citizens Chevrolet furnished these vehicles at a stipulated markup over the price at which the factory invoiced Citizens. Accordingly, on obtaining an order for a Chevrolet, I would call a salesman at Citizens Chevrolet and inform him that a customer had ordered a specific model and color of new Chevrolet containing certain specific options. The salesman would prepare a Citizens Chevrolet Co. sales invoice covering the described vehicle which invoice showed Citizens Chevrolet Co. as the seller and the customer as the purchaser. The selling price that would be shown on this invoice would be the figure which represented the previously agreed upon markup over factory invoice. I would then mail to the salesman the blank power of attorney signed by the customer, and the salesman would in turn complete the State of California Department of Motor Vehicles Dealer's Report of Sale and

Application for Registration of New Vehicle by inserting the name of the customer in the space entitled "Name sold to" and the name "Citizens Chevrolet" in the space entitled "Dealer's Name." The salesman would complete this Report of Sale by signing it pursuant to said blank power of attorney with the name of the customer. Thereupon, Citizens Chevrolet Co. would mail one copy of the Report of [fol. 324] Sale to the State of California, keep a second copy for its files, and attach a third copy as well as a temporary paper license tag to the vehicle.

5. When the vehicle was ready for delivery I would be so informed by the Citizens Chevrolet Co. salesman. I would thereupon dispatch a driver to pick up the vehicle and the customer copy of Citizens Chevrolet's invoice and deliver them to me at CMA. On their arrival, I would call the customer and ask him to come to CMA to pick up his car. On the customer's arrival there would be a settlement between the customer and Union Car Sales on the basis of the price and conditions set forth in the Union Car Sales invoice, and I would thereupon turn over to him the keys for the vehicle. I would not show the customer the Citizens Chevrolet Co. sales invoice, but would in turn pay the price stated thereon to Citizens Chevrolet. The difference between the price stated on the Citizens invoice and the price stated on the Union Car Sales invoice represented Union Car Sales gross profit on the transaction.

6. Union Car Sales did not perform any service on the automobiles sold at CMA. In the instances that a customer questioned me about service, I told him his car was covered [fol. 325] under the Chevrolet new car factory warranty and that service could be obtained at any authorized Chevrolet dealer.

Walter H. Furness

Subscribed and sworn to before me this 29th day of April, 1964.

L. R. Rinehart, Notary Public in and for the State of California.

My Commission Expires Feb. 15, 1966.

(Seal)

[fol. 326]

RAYMOND LANCTOT

Designation by All Defendants

1 My name is Raymond Lanctot. I live at 480 Keene Drive, La Habra, California. I am an electronic engineer on the technical staff of Hughes Aircraft Company, Fullerton, California.

In October 1960, I signed an order for a new 1961 Chevrolet station wagon with Mr. Masching, a salesman at the Gemco discount store in Anaheim. Mr. Masching told me that it would take about a month for delivery, and as it turned out I had to go back east within a month and it was necessary for me to drive back, and I asked him if the car could be purchased a little sooner, say in two weeks and he said he would try for me, but he wouldn't guarantee it. He told me he was acting for a Chevrolet dealer but couldn't tell me at the moment just whom I would be buying it off of. He said it would be a dealer within the local Los Angeles area.

Q. Well, did he tell you you would be actually buying the car from a Chevrolet dealer?

A. Yes, I would be buying it from a dealer and that I would pick it up there at Gemco.

[fol. 327] Two weeks later they were having what they called a road show at Gemco. There were all the American makes on display in the customer parking lot of Gemco. There were Fords, Plymouths and other Chrysler products and Chevrolets and other General Motors products. They were displaying all the different models of Chevrolet. The cars were displayed out in front of the Gemco store in a certain area of the customer parking lot, and, as far as I know, were being offered for sale.

They had one white, 6-passenger Chevrolet station wagon on display there. The car had a sticker on the window and on the door sill with the name: Citizens' Chevrolet of Eagle Rock. I asked Mr. Masching if I could purchase that one instead of the one I had ordered. He said OK. I took delivery right there that afternoon. When I took delivery of this car, it had a new car warranty on it.

At that time I signed the Dealer's Report of Sale and Application for Registration (Def. GM Ex. X which stated

that the car was sold to me by Citizens' Chevrolet on November 12, 1960.

The Gemco store operates on one floor and sells just about everything you can imagine. They sell all types of home conveniences. The new car department was a small [fol. 328] section with about four desks and filing cabinets and tables with brochures of, I would say, just about every car that is on sale in the country now. Although there were other salesmen there, I dealt only with Mr. Masching.

[fol. 329]

HENRY ADAMS

Designation by All Defendants

My name is Henry Adams. I live at 12360 Riverside Drive, North Hollywood, California.

During the years 1959 and 1960, I was employed by Bruder Chevrolet of 5950 Hollywood Boulevard, Hollywood, in the capacity of the salesman who handled DDSI referrals from Fedco stores. Prior to that time, Paul O'Sullivan was the principal in the account and I worked the account in his absence.

I have visited the Fedco stores in Van Nuys and on Slauson Avenue in Los Angeles at which DDSI operated a new car referral department. The first had a booth for the man writing the referrals; the second had a small room about 10 by 25 feet for the same purpose. I recall there was a picture, I believe, of a Chevrolet over the desk in the Van Nuys store.

A customer referred to me by Fedco store would be given a sealed envelope, with my card on the outside indicating me as the Fedco representative. The customer was instructed to see only this representative.

This card was a fold-over type with my name, the dealership address and my office hours. The back of the card [fol. 330] had a map showing how to get to Bruder Chevrolet from the particular Fedco store. These cards were made up by Fedco but I believe that Bruder Chevrolet paid for them. I am not certain.

The envelope which arrived sealed would have information inside it such as the make of car the customer wanted,

the model number, the name and address of the customer, a description of the trade-in, in some cases the wholesale Blue Book value of the trade-in, and a remark whether the customer was ready to buy now or at some future date.

Fedco had established a contractual arrangement with Bruder Chevrolet to sell to Fedco-referred customers at a fixed figure over the dealer's actual invoice. During 1960, this figure was \$250. But an automobile sale isn't a cut and dried thing of listing a bunch of figures. In theory it works out beautifully but in practice it doesn't work out this way. There are many other factors which enter into the sale of an automobile. For example, a Fedco customer from Santa Ana, whose trade-in is appraised by us at \$1100, says, "I can get \$1300 for this car in Santa Ana," and starts to leave. I would say, "I'll give you \$1300," and to make up for this I would then add \$200 to the price of the new car. If this man is a real chiseler and a real hard bargainer, I [fol. 331] might add another \$100 to the new car price because he is going to steal another hundred from me before the deal was consummated.

There were many instances when I did charge Fedco referrals more than the \$250 over the dealer's invoice and there were many instances when I charged less.

We supplied DDSI with copies of the customer's order and interim agreement showing the prices on each sale to a Fedco referral. They policed me actually. They would call me up when we were out of line and I would have to explain.

I talked to Miss Miller of DDSI on the telephone almost daily. I would have to report how many people were in, how many people purchased automobiles; or, if there was a deviation from the \$250 figure, I would generally call to explain why we made the deviation in this particular instance. Occasionally—approximately once a week on the average—I would telephone Miss Miller to advise her that I would have to deviate from the \$250 limit on a specific deal and obtain her prior approval.

Q. What commission did you receive on these sales through Fedco?

A. I was paid, I think for most of the time I handled them, \$50 flat.

[fol. 332] Q. Let's talk about 1960 and 1961.

A. I was paid 200—I am sorry. I was paid \$50, if my memory serves me correctly, except in the area when we did increase the price during the strike area, I believe I was paid 25 per cent of anything in excess of 250 during that unusual area.

Q. When you sold at more than \$250 over invoice, you received an additional 25 per cent, didn't you?

A. I believe I did.

Q. I think so, too.

And so there was an incentive for you to sell at more than \$250 over dealer cost, wasn't there?

A. Yes.

I feel that a customer who drove a long distance from a Fedco store to our dealership did so because he strongly considered that he was going to get a tremendous deal on an automobile. I don't know how good a salesman the Fedco store had to lead these people to come all the way from San Bernardino to Los Angeles to buy an automobile. I believe they felt they would have an added advantage by going through a discount house or referral system.

Q. Do you think that the referral arrangement with the Fedco store in San Bernardino gives Mr. Bruder any undue advantage as compared with the dealers in the San Bernardino area?

[fol. 333] A. I think that any time you expose yourself to a customer, you have a chance of selling him a car, and consequently you do have an advantage, I would say so, yes, he would have an advantage.

I generally would try to tell a Fedco referral customer that we would like to have him bring his car back to Bruder Chevrolet for service but that it was not essential. I really didn't expect those referred from the San Bernardino and San Diego Fedco stores to do so and generally they didn't. To a certain extent, this was true of those referred from the Lakewood Fedco store.

Fedco publishes a Fedco magazine, about the size and thickness of *Time* or *Newsweek*, filled with advertisements of various types of merchandise. Pltf. Ex. 184 includes an advertisement entitled "Automobile Gossip"—from one of the Fedco magazines. I have seen similar advertisements in that magazine. The automobile pictured is a Chevrolet Corvair. This Fedco advertisement says: "We have an

authorized representative at these agencies to assist you and save you money on the following cars." However, I didn't feel I was the representative of Fedco. I felt I was the representative of Bruder Chevrolet in handling the Fedco account.

[fol. 334]

JOAN MILLER

Designation by All Defendants

My name is Joan Miller. My residence address is 1147 North Beechwood Drive, Los Angeles 38, California.

I am the office manager and Vice President of DDSI and have been employed by it since July 1955. I have been and am familiar with DDSI's business relations with various automobile dealers in the Los Angeles area. The DDSI arrangements with Bruder Chevrolet and Warren Biggs Chevrolet were the same as those that DDSI had with dealers in other makes such as Ford, Plymouth, Pontiac, Buick, Oldsmobile, Mercury, Rambler, Studebaker and various imported cars.

Def. GM Ex. AP is a mimeograph form DDSI used in 1960 and 1961 to send to dealers with whom DDSI was considering making arrangements for the sale of cars. It is a uniform arrangement with all our dealer-suppliers. This was the form that was used not only with Bruder Chevrolet and Biggs Chevrolet but also with the dealers in the other makes of cars.

[fol. 335] The customers DDSI referred to Chevrolet dealers in the Los Angeles area purchased their cars directly from the Chevrolet dealers. In no case did DDSI take title to the car and then resell it to the customer.

DDSI received a \$50 fee from the dealer on any car sold to a Fedco-referred customer. One half of this fee was paid by DDSI to Fedco to pay for the space provided in the Fedco stores.

Our policy was to refer Chevrolet customers from the Fedco stores in Lakewood, Los Angeles, (Slauson Avenue) and San Diego to Warren Biggs Chevrolet and to refer Chevrolet customers from the Fedco stores in Van Nuys and San Bernardino to Bruder Chevrolet. There was so much Chevrolet business that one dealer couldn't sufficiently

handle it. As long as their prices were the same, we referred to both. Frequently, Mr. Adams, the salesman at Bruder Chevrolet, would call and say, "Mr. Bruder wants to know what we have to do to get more business." I would say: "Well, your prices are the same; all we have to do is see better results of the people that we send to you to give you more of the business." Mr. Adams' percentage of sales, measured by the number of people we sent him, was lower than Mr. Blair's, the salesman at Warren Biggs Chevrolet. [fol. 336] During the years 1960 and 1961, DDSI did not maintain a separate auto referral location at the Fedco stores in San Diego and San Bernardino. It was part of the insurance counter of Federal Employees Insurance Agency. Auto referrals were handled by the employe of the insurance agency under our instructions. He was paid \$5 by DDSI for handling each car referral. At each of the other three Fedco stores (in Van Nuys and Lakewood and on Slauson Avenue in Los Angeles), the DDSI auto referral activity was handled by a DDSI employe who had a separate space for this purpose. At all five Fedco locations, there was a neon sign saying, "Auto Referrals." There was also a sign saying, "Automobiles Available on Referrals," with a list showing the names of the cars available.

I have worked at a DDSI referral desk at Fedco locations. Oftentimes, the first thing a customer would want to know was the price of the car. I would tell him: "We don't quote prices but I can give you a referral to a dealer with whom we have a price contract. We have a man designated at that agency who handles our account and he will be happy to quote an exact price to you." Sometimes, I would tell him that we signed to a contract that dealer or dealers who were willing to sell the cars at what we felt to be the best price; that, because of the enormous amount of traffic in the Fedco stores, we felt that the dealers were interested [fol. 337] in doing business with our type of people. Especially if the customers pressed me about a price, I would also tell them that it was a one-price policy; that it was the base price on the car plus the profit specified in our agreement with the dealer; and that the accessories were all to be sold at dealer invoice cost.

In talking to a Fedco customer who is not sure which make of car to buy, I avoid suggesting any make. I make a

point to stay out of it because, if I suggested a Chevrolet or Ford and the customer was unhappy with his purchase, he might come back and throw rocks at me. I explained to the customer that I would rather not recommend.

When we received the Bruder Chevrolet letter agreement with DDSI for the 1960 model (Pltf. Ex. 151), it stated a price of \$250 over invoice for Chevrolet passenger and Corvair cars. I telephoned Henry Adams at Bruder Chevrolet and asked if Corvettes were included. He told me he would have to check. He called back and said, no. I asked what figure was to be used. He asked what Warren Biggs (the other Los Angeles Chevrolet dealer selling through Fedco) was doing. I told him that the Biggs letter said \$300 over invoice for Corvettes and Mr. Adams said that [fol. 338] they would do the same thing.

On the DDSI copy of Pltf. Ex. 147, which is the letter agreement between Biggs Chevrolet and DDSI specifying that 1961 Chevrolets would be sold at \$250 over actual invoice and 1961 Corvettes at \$300 over actual invoice, I added after the word "Corvette" the notation "& Monzas." The reason I did this is: Although Corvair Monzas were an extremely popular car, they were not separated in the Biggs Chevrolet letter from other Chevrolets which were to be sold at \$250 over actual invoice. Mr. Blair, the salesman at Warren Biggs Chevrolet, advised me that Mr. Biggs felt that he would have to get \$300 over invoice for Monzas and Mr. Blair asked if it was all right with me. Mr. Dupuie and I agreed that it was fair that they get \$300 on a popular car like that, so I made the handwritten notation.

I would not be overbearing with Bruder Chevrolet if the price charged a Fedco referral for a Corvair Monza exceeded the \$250 limit. Monzas were a hot item, a premium item just like the Chevrolet Impala sports coupe and the Corvette. In the automobile retailing business, the more popular the model, the shorter the supply of that model, and the greater the demand, the higher the price.

[fol. 339] I received two copies of the customer purchase order on sales to Fedco referrals made by Bruder Chevrolet which showed the price charged the customer. I sent the second copy to Mr. Denny who was on the Board of Directors of Fedco. Both of us had the same reason for receiving these copies. He wanted to check us while we were checking

Bruder Chevrolet to see that the agreement on a maximum gross profit was being complied with.

The entire purpose in checking the copies of the customer purchase orders from Bruder Chevrolet was to see that errors weren't made; to bring errors to the attention of whoever made them; to place him on notice that I had observed his failure to live up to the agreement; and to see to it that in the future the maximum figure was strictly adhered to.

I cannot recall any instance where I asked them to make an adjustment with the customer where the gross profit charged the customer exceeded the agreed maximum.

On sales made to Fedco referrals by Warren Biggs Chevrolet, the same procedure was followed with regard to receiving and checking copies of customer purchase orders to determine if the gross profit ceiling had been adhered to and questioning those that did exceed the maximum. [fol. 340] mum.

Cross-Designation by Plaintiff

Q. Did you produce, Miss Miller, in response to the subpoena duces tecum that was addressed to Dealers Diversified Services, Incorporated, letter that you received from various Chevrolet dealers in which they offered to do business with the Dealers Diversified Services, Inc. on this referral program?

A. Yes, sir.

Q. Now, would you tell us how many of such inquiries concerning entering into these business relationships you accepted or followed up?

A. Well, the phone—salesmen, managers would call constantly from not only Chevrolet but other makes of cars—other parties, but if we entered into serious negotiations with every salesman that called on the phone looking for some business, we wouldn't have had time to write referrals or run our business. So I would take the calls and tell the salesman—listen to what he had to say and then say, "Well, if you will send us a letter stating what you have in mind, telling us at which price you are interested in selling cars to our customer, and when we receive that—and have it signed by somebody of reasonable authority, when we re-

[fol. 341] ceive that letter, if we are interested, we'll call you."

Q. And then, so it was a frequent event for you to receive inquiries from different types of dealers, including Chevrolet dealers, in which they offered to do business, isn't that correct?

A. It was a rare week that the phone didn't ring for that purpose at least 20 times.

Q. So this would reflect, I take it, that the dealers were anxious to do business on that basis and were soliciting Dealers Diversified Services to enter into a business relationship to sell cars on a referral basis?

A. That is correct.

[fol. 342]

BERNARD T. DOTTL

Designation by All Defendants

My name is Bernard T. Dottl. I live at 8217 Hoxey Avenue, Los Angeles 45, California. I am a salesman employed at Warren Biggs Chevrolet. I have been there about a year and three months. Before that I was employed by West Adams Chevrolet—from October 1959 to September 1961. Before working at West Adams Chevrolet, I was employed by Warren Biggs Chevrolet for about one year and eight months.

When I was first employed at Warren Biggs Chevrolet, I handled referral service accounts of Fleet Sales Company located on Crenshaw Boulevard in Los Angeles. The way this worked was that each morning I received various referrals from Fleet Sales in the mail. It was my job to immediately contact these prospects and explain to them that this was a one-shot deal, one call. If they didn't buy, nobody was mad; if they didn't like the price, we would just forget it. The customer received a copy of the referral slip with no pricing on it. The one I received was priced out. I would ask the customer if he was ready to buy before I showed him my slip with the price. I explained to the customer that, if he was ready to buy, I expected him to give me a deposit and buy it, or pass, and we would forget [fol. 343] the whole thing. So I would show him the pricing. If he liked it, we received an order.

Q. As far as you know, Mr. Dottl, did the customer get any piece of paper from Fleet Sales Company that had the price on it?

A. No, they did not.

Q. So when the customer came to your place of business they did not know the price that you were going to quote them?

A. Definitely not.

Q. . . . Fleet Sales Company filled in the price, I take it, on the sheet you got in the mail, did they not?

A. That's correct.

Q. Will you tell us how they came to fill in the price?

A. These prices were all pre-arranged or pre-adjusted according to the market.

Q. So that Fleet Sales Company knew in advance the price that you were authorized to quote a person referred by them?

A. That's correct.

Q. Was it your understanding, Mr. Dottl, that that price would remain constant, or was it subject to change from time to time?

[fol. 344] A. The only possible change that would be made, if the number of sales to the number of referrals dropped off, that mean that they were too high with the current market.

A typical conversation with a prospect would be as follows: I would ask him if they were ready to buy, and they could say "Yes" or "No," and if they brought some money with them, to place a deposit on a car if they liked this price that I was going to present to them. They usually would say, "Yes, we know this is a one-shot deal or a one-call deal, and if we like the price, naturally we will give you a deposit." So I would turn my sheet over and let them look at the prices and, if they liked the price, why, naturally, they gave me a deposit.

Q. What if they didn't like the price, Mr. Dottl?

A. Nobody was mad. We didn't care to have them come back.

Q. Did you renegotiate the price with them?

A. No, sir.

Q. Did any customers ever suggest to you that they had that price beat by another dealer?

A. I was never interested in that when they brought that up.

[fol. 345] Q. Regardless of whether you were interested, did any customer suggest that they had that price beat by another dealer?

A. Oh, yes, they have said that many times.

Q. Did you attempt to renegotiate the price with those customers?

A. No, indeed.

Q. You quoted them the one price and that was it?

A. That's correct.

Sometime in 1959, I was approached one day by Mr. Biggs or one of my superiors there and told—no more Fleet Sales. I got no reason why or anything else.

After that, in about October 1959, I began working at West Adams Chevrolet. The owners of Fleet Sales Company suggested that I make this change in order to handle their referrals to West Adams Chevrolet. Mr. Pippin, with whom I talked at West Adams Chevrolet, understood that I was to handle the Fleet Sales referral accounts. At that time, West Adams Chevrolet was already doing business with Fleet Sales Company.

[fol. 346] At West Adams Chevrolet I handled the customers referred by Fleet Sales Company in the same way as I did while I was at Warren Biggs Chevrolet. The prices quoted to customers referred by Fleet Sales were pre-arranged between Fleet Sales Company and West Adams Chevrolet before I went to work at West Adams Chevrolet. These prices were subject to change from time to time as market conditions may have changed.

On each referral that was sold, Fleet Sales Company was paid by West Adams Chevrolet one third of the gross profit on the sale (the amount over the dealer's invoice cost plus \$10 dealer advertising) up to a maximum of \$75. As the salesman, West Adams Chevrolet paid me 25% of the gross profit that was left plus \$100 bonus when I delivered 20 cars.

[fol. 347]

CARROLL DAVID CONE

Designation by All Defendants

My name is Carroll David Cone. I am an automobile dealer. I have an interest in two Chevrolet dealerships, Cone Bros. Chevrolet, Anaheim, and Cone Chevrolet Co., Fullerton. Both of these dealerships are located in Orange County, California.

I recall attending a meeting with a group of Chevrolet dealers in the office of Mr. O'Connor some time in or about July 1960. I wasn't too vocal in that meeting. Some of the others had reports of shopping they had done but I didn't. Mr. O'Connor was courteous but very non-committal. He heard what we had to say—that we felt these were unauthorized outlets—and we were encouraging him to do whatever he could do about it.

Mr. O'Connor's reply, the best I can recollect, was that he thought that was the wrong type of merchandising, and he would try to have the parties involved contacted and talked to.

Subsequent to that date, in November 1960 I was in Honolulu but I wasn't at the Loser Annual Meeting on November 10. When I got back I found out my salesmen had gotten together and written letters and telegrams to [fol. 348] Mr. Gordon, Mr. Cole, Mr. Staley and Mr. O'Connor. They were all written and they were very anxious to send them and asked me immediately when I got back if it was all right to send them. I did not encourage them or ask them to write. They were adamant and up in arms. I said, "You are all free, white and 21 and it is your livelihood as much as it is mine; just go ahead and do what you want." I believe the Ford salesmen did the same thing. I did not see one, but the Ford boys got a telegram direct from McNamara—that is what they told me, and he said he was unequivocally against this type of merchandising—he was the President of Ford at the time. Now he's the Secretary of Defense.

I wrote a letter to Mr. Gordon (Pltf. Ex. 35), Mr. Cole (Pltf. Ex. 36), Mr. Staley (Pltf. Ex. 37) and Mr. O'Connor (Pltf. Ex. 39) personally. In my letter I said that the sales through discount houses had a deteriorating effect on the

morale as well as of the earnings of our career sales people. Our career sales people would demonstrate the automobile, would spend their time and effort and then the deal would be made through a discount house. There was quite a period there when people had the psychology that at a discount house you were buying something cheaper than you were any place else. Now I don't know whether that has been proven or disproven, but a lot of them would try it. I [fol. 349] believe a lot of people went into the discount store just because it had a sign up "Discount House" and just willy-nilly bought a car without any knowledge as to what the car could be purchased for. Consequently our salesmen would lose the deal. That became very demoralizing and some of them quit.

I felt that discount outlets were wrong because they diluted the market. What I mean by that is this. When a Chevrolet dealership is set up—a planning potential is arrived at for that dealership. If we set our dealership up on a basis of selling, we will say, 700 cars a year, our facilities are that big, the number of mechanics we hire are that big, the number of parts that we got in stock are that big, and everything is commensurate with the 700 automobiles. We carry an adequate parts stock to properly service and see that those Chevrolets are kept running. I think our inventory will run pretty close to \$60,000 at all times—that is finished Chevrolet parts—to keep those cars going. In addition to that we have to maintain an adequate service department and factory trained mechanics, so that they are properly trained and capable of keeping those cars running and creating the image that we want to create as an individual dealership, and also the image that Chevrolet wants to create on a national basis for the reason of perpetuating [fol. 350] the business and perpetuating the car. And, then, all of a sudden, there are two or three unauthorized outlets that are opened right there, then, that drops down, you see, from 700 to 450 or 500, it makes it an unprofitable situation to be a Chevrolet dealer and it makes it an insolvent deal to build buildings or have adequate quarters or adequate machinery in order to survive as a retail automobile dealer. So, when I refer to the dilution, I mean that instead of having one authorized outlet for a given planning potential, you have got several outlets—just anybody

can sell an automobile that has got a telephone and a desk and has got a connection; and there is a lot more responsibility that goes with selling an automobile than a telephone and a desk.

On December 6, 1960 I wrote a letter to Bob O'Connor (Pltf. Ex. 106). I had a telephone conversation with him almost immediately prior to the writing of this letter and told him that the Orange County Automobile Dealers Association saw fit to have a complete set of pictures taken of the Gemco show, and all of the display of the automobiles.

I also sent a letter to Bob O'Connor in January 1961 (Pltf. Ex. 128) to acquaint him with the situation as it [fol. 351] existed as of that date—and to tell him that it had not changed substantially from the time that the Roche and Staley letters had gone out. The writing of this letter was an individual effort. The initiative was all on our side.

In mid-February 1960 the Losor Board of Directors decided to go out and make an actual purchase of an automobile and to eliminate the conversation. We decided to buy the car, take delivery on it and resell it ourselves—if we sustained a loss it would be absorbed by the Association—we didn't want any individual to carry the load.

Both Cone Chevrolet Co. and Cone Bros. Chevrolet are members of Losor—it is the corporation that is the member. Losor is not a part of General Motors in any respect—no connection at all—and no direction or indication of action that the Association should take is ever suggested by General Motors. As a matter of fact, I think they have a ruling that one of their employees can't even attend a meeting as a guest.

[fol. 352] Additional Designation by Defendants Losor Chevrolet Dealers Association, Dealers' Service, Inc. and Foothill Chevrolet Dealers Association

Losor has a trading bureau which is substantially like DSI's and Foothill's. It would be physically impossible for any one of us to operate and endeavor to deliver a car to anybody the way they want to have it, with all the ramifications and options and colors and models of three or four different lines of cars—so every Monday morning, our car trade girl calls in her stock to Losor and everybody else in the organization does that, and assuming that a prospective

purchaser comes in and wants a white Impala 1837 and so on, we would call that in to the trade association and they would tell us what dealer had that in stock. If we could find a dealer that had one then we call and we will trade a car for car.

Usually they will accept a car that we have in stock for the car that they have. This is a tremendous benefit to the members. I would hate to operate without it. To my knowledge none of the dealerships that were selling through discount houses or referral services were denied this privilege of partaking in the trading bureau. I know of no action taken by Losor to deprive any of its members of any of the activities of the association.

[fol. 353]

WILLIAM HOWARD SEIMAN

Designation by All Defendants

Sometime after November 16, 1960, I don't recall how soon after, 2 or 3 days I think; maybe a week, Bob O'Connor came to Selman Chevrolet in Orange, California, to meet with my salesmen. We had a meeting in the salesroom. There might have been one or two of my salesmen absent but I think most of them were there that signed the telegram (Pltf. Ex. 15). I was there. I didn't know prior to the meeting what Mr. O'Connor wanted for I didn't know about the telegram. I welcomed him and said, "Glad to have you out. The boys are ready."

He said, "I want to discuss the telegram you sent to Mr. Gordon," or someone.

I was quite embarrassed, I did not know about it, and I asked him, "What telegram?"

He said, "The telegram that your men sent to Mr. Gordon," I believe.

That was the first of my knowledge of the telegram.

So we all sat down. I introduced Mr. O'Connor to some of my men who I didn't know whether they knew him or not. Mr. O'Connor said to the salesmen, "I want to discuss the telegram that you gentlemen sent Mr. Gordon." He [fol. 354] said. "I have it here, and I know that you boys

are riled up a little bit, I know how you feel, but as zone manager it is not in my power to establish policy for the corporation. I am sure that General Motors Corporation is aware of these things that you gentlemen are complaining about, and they have a policy board, or some sort of people in Detroit, who rule on policy. It is not in my jurisdiction as a sales manager for the zone to do it, and I regret that I can do nothing about the thing at this time."

That's about the speech. Mr. O'Connor did not make any statement in respect to whether or not the dealers who were selling through discount houses or referral services were violating their Dealer Selling Agreements.

Q. Mr. O'Connor came out to Orange and in effect told your salesmen and yourself that there was nothing that he could do about the matter about which they complained?

A. That's right. It was a matter of policy which would be determined by General Motors, and that General Motors was aware of the complaint that they had registered. And that's about it.

[fol. 355]

MARION H. JOHNSON

Designation by All Defendants

My name is Marion H. Johnson. I am Vice President and part owner of Harbor Chevrolet, a Chevrolet dealership in Long Beach, California. I also act as General Counsel for Harbor Chevrolet. I am an attorney and was in private practice in this State as well as serving as a Deputy District Attorney and as City Prosecutor in Oakland and Alameda, California. I started working for Harbor Chevrolet June 1, 1956, and have been with Harbor Chevrolet continuously since that time. Mr. Henson, the President and a part owner of Harbor Chevrolet, is my father-in-law.

Mrs. Evelyn Davis is a secretary for Losor Chevrolet Dealers Association—her main duties are to run our trading bureau. Some time in February, 1961, probably around the 14th, she told me she had placed a deposit on a new Chevrolet at Gemco—and that she was buying it for Losor. She said that she was worried about buying it just as a single woman without her husband. But she had been

married for many years and her husband had always been with her when she bought a car—so I offered to go along. It wasn't my suggestion she buy the car—she already had been there and made a deposit before I knew anything [fol. 356] about it. She had borrowed a Gemco membership card from Eric Palmer.

I don't know whether it was Mrs. Davis or Mr. Cone, but one of them I believe told me that Eric Palmer was an employe of Cone Bros. and that he had loaned the card to Evelyn or to Mr. Cone, I don't know which, and gave permission to use it in the purchase of an automobile. That was my understanding.

There were lots of rumors that people could buy cars at this discount house and at that discount house. The salesmen were very, very unhappy, they thought it was unfair competition and were growling to us continually about people coming from discount houses, and when they wanted to wait on them they would say, "No, we merely want to see the color, we want to get the option numbers, we have already purchased the car at a discount house and they told us to come over here and get the pertinent data so they could order the car for us." We went to Gemco to determine whether Chevrolets were being delivered through them and from what dealer they were being obtained.

At Gemco Mrs. Davis and I met a Mr. Webb and there was quite a bit of conversation about it, but he said that he couldn't deliver the car at that premise because he did not have a license.

[fol. 357] Q. Did Mr. Webb tell you that he was in the process of obtaining a license?

A. He may have. I don't recall.

Q. Did he explain to you about a transition in ownership of the facilities at the Gemco store?

A. He may have.

We told him that we wanted it delivered at that premises and he said, "No." We asked him where it was going to be delivered from and he wouldn't tell us. So we said that we would like to think it over, and as it was just about lunch time, we excused ourselves to go and have lunch. When we returned after lunch he told us that it was at Schonlaw Chevrolet. We told him that we wanted to drive our own car up, and so he got in his car, and he told us how to get

to Schonlaw. We drove up at approximately the same time, parked in the parking lot, and as we got out of the car, we met Mr. Webb and he took us in to Schonlaw.

I did not take delivery that day. I brought the documents—the purchase order—back to Harbor Chevrolet but Schonlaw Chevrolet had to put power brakes on the car and I took delivery a few days later. When I took delivery, I drove the car back to Harbor Chevrolet, drove it into the parking lot and told Mr. Henson the circumstances under which I had purchased it.

[fol. 358] I don't know who made the appointment but subsequently somebody made an appointment for us to go to Mr. O'Connor's office to give him the information.

When we got to Mr. O'Connor's office he seemed to know all about the transaction before we got there. I thought it was going to be a big surprise to put these papers on his desk, and when I placed the papers on the side of his desk, he already had photostatic copies on his desk of the transaction. Mr. O'Connor stated that Mr. Schonlaw had discovered that I was a shopper and that he had offered to buy the car back. I do not know whose idea this offer to repurchase was.

When we met with Mr. O'Connor in his office, the subject of whether the discount houses and referral services were licensed came up. I brought it up in telling them the circumstances of the purchase and the fact that the salesman at Gemco made the statement that they were not licensed. I believe I had thought of the matter before and I think I had discussed the matter before, but it was merely a matter of speculation on my part until I actually went to a discount house and found out for myself.

Q. What was your purpose in bringing up the subject of licensing, Mr. Johnson?

A. Well, perhaps I had more than one purpose. I know that one purpose was to tell them the facts of the purchase. [fol. 359] It was one of the circumstances surrounding the purchase. Another thing, I thought that it was unfair that we should have to be licensed, that our salesmen and dealership should be strictly controlled by the Department of Motor Vehicles, and yet people that were selling cars would not be licensed.

I still think that.

The shopping went hand in hand with determining whether they were licensed or not. It has always been my impression that before you can take any steps towards a decision, much less action, that you have to know the facts, and the only way to know the facts in this case would be to do some investigating.

Additional Designation by Defendant Losor Chevrolet Dealers Association, Dealers' Service, Inc. and Foothill Chevrolet Dealers Association

Q. Mr. Johnson, you are an attorney; don't you know that you can go down to some of the administrative agencies in the State of California and ask them if someone has a license?

A. I also know that some of these discount houses do not have licenses in the name of the discount house.

[fol. 360] Q. Wouldn't that appear from the records of the Department of Motor Vehicles?

A. I don't know. I have never looked at them. I know if I went down to look, for instance, at a license for a discount house in the discount house name, that the license might appear in another name. I think I was sitting in court and I heard testimony that these were concessions within a discount house operating under different names.

Q. Did you ever inquire whether or not the Department of Motor Vehicles listed the license holders by location?

A. I did not inquire, no.

Q. Did you ever make any inquiry of the Department of Motor Vehicles concerning the licensing of discount houses and referral services?

A. I did not, directly, but I think I have talked to people prior to that time about whether they were or not.

Q. Did you ever make inquiry of any administrative agency or department of the State of California to determine whether or not discount houses and referral services held licenses?

A. I don't know whether I did or not. I don't believe I did.

[fol. 361] Q. Did you ever discuss the matter with any of the prosecuting agencies of the State of California with a view towards seeking enforcement of the law if the discount houses or referral services were violating the law?

A. I have talked to the prosecuting agencies about viola-

tions of the law, but I don't know whether they particularly pertained to discount houses.

I sought a prosecution for a salesman acting without a license some months prior to that, and the prosecuting attorney in the City of Long Beach turned down the complaint on the ground that there was only one count, and he wanted more counts so he would have a gilt-edged case before he would prosecute it.

Q. Who was the salesman?

A. The salesman was Al Holt. As I say, it was not pertaining to a discount house, but it was pertaining to what we felt were actions outside the scope of the license.

Q. Was this one of your salesmen?

A. He had been one of our salesmen. He was not one of our salesmen at the time that we asked for this investigation and complaint.

[fol. 362] Q. But he had no connection at all with discount houses and referral services?

A. He may have. I didn't know of any connection with discount houses.

Q. So at this time you knew that the proper method of seeking enforcement of the law was to go to the prosecuting agency and ask them to prosecute people if they were violating the law, didn't you?

A. I know from my own experience as a prosecutor, as well as my experience since then, that without evidence a prosecutor is not much interested in your case.

Q. Mr. Johnson, did you know that if you suspected that the law was being violated, it was not the purpose of private individuals to go about gathering the evidence, but to turn that information over to the proper authorities?

A. I have never understood that to be a true statement of the law.

Many times, when I was a prosecuting attorney for the City of Alameda, private individuals did gather evidence and present it to me and if it was sufficient I would issue a complaint and prosecute the case. An example of that was in one instance the Encinal Terminals, which is a large subsidiary of California Packing Corporation, suspected [fol. 363] thefts within their organization. They investigated the thing completely themselves. When they had what

they thought was sufficient evidence, they brought the case in to me for prosecution.

Q. You didn't tell them to go out and get some more evidence, "We don't have enough personnel here to get it," did you?

A. I didn't even know about the case until it was presented to me. This is only one example of many.

Additional Designation by Defendants Losor Chevrolet Dealers Association, Dealers' Service, Inc. and Foothill Chevrolet Dealers Association

Toward the latter part of March, 1961, Mr. Roberts took over supervision of DeOrto. Mr. Roberts was to supervise DeOrto and the gathering, investigation concerning this discount house activities and licensing activities, and also I believe he was to prepare evidence to present to the legislature to perhaps get either further enforcement of the salesmen's and dealers' licensing law or to possibly amend the law to make it more effective.

Q. In other words, you had it in mind at that time that [fols. 364-365] perhaps the law did not adequately, as far as you were concerned, prevent discount houses and referral services from dealing in the sale of automobiles?

A. No, it wasn't that. I think the law clearly does prevent them from acting without a license, and also prevents certain phases of selling for dealers other than your employing dealer. However, our experience had been and my personal experience had been that the Department of Motor Vehicles had taken the position that they didn't feel that the law was sufficiently clear to enforce. And that is what I am referring to when I said that Mr. Roberts was to explore the possibilities of further legislation to either clarify or strengthen this law.

[fol. 366] AFFIDAVIT OF THEODORE SCHONLAW

Theodore Schonlaw, being first duly sworn, deposes and says:

1. I have been Vice-President and in charge of the day to day operations of Charles Schonlaw Chevrolet, a franchised Chevrolet dealership located at 7601 Sunset Boulevard, Hollywood 46, California, for more than 10 years.

2. On February 17, 1961, Charles Schonlaw Chevrolet accepted an order for a new 1961 Chevrolet Impala automobile from a customer giving the name Eric Palmer and the address 102 North Montague, Fullerton, California. On the same date the dealership received \$50.00 in cash as a deposit on the car from one Evelyn Palmer.

3. On February 21, 1961, the customer took delivery of the new Chevrolet at the dealership and presented a cashier's check drawn on the Long Beach Main Office of the Bank of America for \$2,971.87, representing the balance of the purchase price.

4. It is unusual for a customer to present a cashier's [fol. 367] check in payment for an automobile. I accordingly became somewhat curious. My curiosity was increased upon learning that the salesman who had sold the car to Eric Palmer was Robert A. Pagliuca, who went by the name "Joe Palooka." I had suspected for some time previous to this sale that contrary to my instructions Palooka might be selling new Chevrolets through discount houses. Accordingly, I ascertained, by having my sales manager, William H. Halvorson, call the bank which had issued the cashier's check, that the check had been purchased by Losor.

5. To the best of my recollection, on either February 21, 1961—the date the car was delivered—or on the day after, I instructed Halvorson to call Dick Hawthorne, a City Manager at the Chevrolet Los Angeles Zone Office and advise him that the Schonlaw dealership had been shopped by Losor. Halvorson reported to me that Hawthorne had stated in substance that the dealership should do nothing about it.

6. During the next few days, I recall that I spoke on the telephone to Hawthorne twice. This transaction was referred to in the course of these conversations. In substance,

I told Hawthorne that our dealership was willing to buy back the car from Losor and wanted to know what the Zone thought I should do. Hawthorne continued to indicate that my dealership should let Losor keep the car. I told Hawthorne that I had discontinued all selling through dis-[fols. 368-369] count houses in November 1960, and had informed my sales personnel that no further transactions through discount houses would be allowed. I also told Hawthorne that the Palmer car had been sold in discount house channels against my orders and without my knowledge, and that the dealership had fired Joe Palooka for disobeying his instructions.

7. Two or three days after the last of these conversations with Hawthorne, Hawthorne phoned me and told me that if I still wanted to buy the car back, the car could be picked up at the Zone Office. I told him that I did and Hawthorne said to make a check for the purchase price of the car payable to Cameron Aikens. I therefore made the dealership's check No. 86367 for \$3,021.87 dated February 27, 1961, payable to Cameron Aikens. My best recollection is that I sent someone employed by the dealership to the Zone Office to pick up the car and that I mailed the check directly to Mr. Aikens' office.

Theodore Schonlaw

Subscribed and sworn to before me this 28th day of April, 1964.

R. A. Peterson, Notary Public in and for the State of California.

My Commission Expires March 30, 1968.

[fol. 370] AFFIDAVIT OF RUDOLPH F. SCHREITMUELLER

Rudolph F. Schreitmueller of 211 Chicago Boulevard, Sea Girt, New Jersey, being duly sworn, deposes and says that:

I was an employe of General Motors Corporation from November 6, 1922 until my retirement on February 28, 1961—a period of more than 38 years. I was first employed in 1922 at the Tarrytown, New York Zone of Chevrolet in charge of the Analyzation Department, which was the early beginnings of market research in Chevrolet. In October 1925, I was promoted to National Dealer Organization Manager for Chevrolet at Detroit. In March 1930, I was appointed Manager of the Dealer Organization Department of the General Motors Sales Section which co-ordinates the activities of the sales departments of all motor car and truck divisions of General Motors—the Cadillac, Buick, Oldsmobile, Pontiac, Chevrolet and General Motors Truck divisions. I continued in that capacity until my retirement. In this position, I was concerned with market analysis and participated in the review, development, coordination and carrying out of General Motors practices and policies re-[fol. 371] lating to all General Motors dealers and to the distribution of all makes of General Motors cars and trucks.

In 1922, there was general dissatisfaction with the methods then in use to determine how many and where dealers should be located in a given area and whether a particular dealer was selling a satisfactory quantity of motor vehicles. The principal statistical information then available was the United States Census Bureau population count taken only once every ten years. This was generally published several years later and furnished population data only for the state, each county in the state and, later, for some of the larger cities.

At that time, the practice of Chevrolet and the general practice of the automobile industry was to take the expected national unit sales volume for a particular make of car and divide it into the total national population shown by the last published census count to arrive at a "population per car" ratio. This ratio was then indiscriminately [fol. 372] applied to all the communities in the country

without regard to any other local factors which would affect the market potential of the particular community. For example, New York City was an important part of the Tarrytown Zone. Because of its large foreign population and its great congestion, it, in fact, represented one of the poorest markets in the country when measured solely on total population. Conversely, wealthy suburbs, like Westchester County, New York, were far better markets in relation to their population. In the early 1920's, Tarrytown Zone was repeatedly criticized because New York City was not absorbing its so-called "proper proportion" of Chevrolets. It was this recurring criticism which spurred the development in the Tarrytown Zone of a more reliable standard for measuring sales potential and performance.

The information contained in the registration of new cars filed in state and local motor vehicle offices in New York, New Jersey and Connecticut (the states in which the Tarrytown Zone operated) offered the best and most accurate [fol. 373] rate source for this purpose. These regularly recorded data showed the name and address of all new car purchasers, the date of each purchase, the make and model of car purchased. Using these registration data for new motor vehicles, we developed our own list of car purchasers by month of purchase and for each community in the Chevrolet Tarrytown Zone. We made these community by community compilations for Chevrolets and for each of the other makes of cars which were competitive with Chevrolets—what became known as the "Price Class Market." By relating, each month, purchases of Chevrolets to the total purchases of all makes within the price class, we determined Chevrolet's performance each month in each community against the performance of its principal competitors each month in each community. This became known as "the percentage of price class."

These first community registration figures proved very revealing and helpful because they told us for the first time with almost pinpoint accuracy where the market potential and the service needs of Chevrolet owners existed [fol. 374] community by community. These valuable data therefore gave us a firmer and more accurate basis for determining how many dealers of what size we needed and where they should be located.

By use of these figures, we could also analyze sales community by community, month by month, and determine the "norm" for Chevrolet sales in relation to the entire "price class." If Chevrolet's "percentage of the price" class fell below the "norm" in any community, Chevrolet would know that there was something wrong and would investigate, find out what the problems were and take steps to have them cured before more sales were lost to its competitors. By this means, Chevrolet could, for instance, more quickly learn about and cure specific situations where its percentage of sales was suffering because of poor dealer service to Chevrolet owners or because the dealer or dealers in the area were not aggressive enough.

[fol. 375] During 1924 and 1925, the Tarrytown Zone led all of the other Chevrolet zones in the country by practically every measure of zone standings being maintained by Chevrolet. In addition, Tarrytown was the first Chevrolet zone in the country to outsell Ford. Because it had these community by community data on Chevrolet's price class performance, it was able to do this as early as 1924, at a time when Chevrolet was being outsold by Ford in some areas such as Texas by as high as forty to one.

In September 1925, it was decided to nationalize this system. I was assigned to the Chevrolet Central Office in Detroit to supervise its installation in every Chevrolet zone in the country. As this system was used later by more and more of the other Chevrolet zones in the country, Chevrolet's ability to compete with other car manufacturers—especially Ford, the leader at the time—was substantially helped by the fact that Chevrolet was the only car manufacturer using this more accurate, detailed and current information about the amount and location of the sales potential and the performance of Chevrolet dealers in each [fol. 376] community. In 1926, R. H. Grant, then General Sales Manager of Chevrolet, made the statement that this system, when adopted for the country, was probably worth an extra 250,000 cars nationally to Chevrolet, even at the volume levels of the time.

In the fall of 1926, I ran into a specific illustration of the fallacy of the "population per car" ratio then still being used by other manufacturers and by Chevrolet field personnel in other parts of the country. In discussing a plan

for the number and location of Chevrolet dealers in the metropolitan Chicago area, the regional manager stated that we should have one Chevrolet dealer for every 50,000 people in Chicago. At that time the population of the city was about three million. This would have called for 60 Chevrolet dealers or about 25 more dealers than they already had. Yet the statistical information we had on the existing Chevrolet dealers in Chicago demonstrated that we already had more dealers than we needed for the sales potential of that area and that many were unable to operate profitably. To have added 70% more dealers in these circumstances, assuming that we could have persuaded the required additional number of dealers to make the necessary investment in the face of these facts, would have meant that a very high percentage of them would soon end [fol. 377] up in financial failure because of the clear lack of adequate sales potential to support that large a number of dealers. Even if Chevrolet could have temporarily gained an increase in unit sales by a temporary over-supply of dealers, this gain would have been more than outweighed by the losses in sales that would have resulted from the inevitable disruption and unrest that dealer failures bring, the discouragement of investments by new dealers that such failures generate and the cumulative adverse effect on car owners in having substantial numbers of dealers go out of business.

The Chicago Regional Manager was overruled by Chevrolet's Central Office and rightly so. Both had the same objectives—to obtain a satisfactory and expanding volume of sales for Chevrolet products. However, what the regional manager missed was that the long term success of Chevrolet depended on its ability to build and maintain a stable and reasonably profitable dealer organization before it could help to achieve a consistently satisfactory volume of sales. What he did not adequately realize was that the most effective way for Chevrolet to compete at the retail level against its rivals was to follow a course in the appoint-[fol. 378] ment and location of dealers which would give reasonable assurance that during good years and bad and for popular as well as less popular model years, a network of qualified dealers would be operating throughout the country, dedicated to the promotion of the sale of Chev-

rolets and adequately equipped and staffed and conveniently located to take care of the service needs of Chevrolet owners. This goal could be attained and maintained only if the dealer body, as a group and individually, could foresee a reasonable prospect over a reasonable period of years for a satisfactory return on the heavy investments they were being asked to make. Obviously it was not General Motors' policy to attempt to guarantee profitable operations for each of its dealers. However, its policy did involve attempting to avoid the creation of conditions, through the appointment of too many dealers or poorly located dealers, which would make successful operation so difficult or impossible that an effective dealer system could not be maintained. This could be achieved only if the number, size and locations of Chevrolet dealers were carefully matched to the sales potential and service needs of the areas in which they operated. This long-term philosophy became the keystone of all future Chevrolet, and eventually General Motors, dealer planning.

[fol. 379] During the early 1920's, R. L. Polk & Co. had started a business of collecting data on the registration of new and used motor vehicles. In the mid-1920's Chevrolet made arrangements with that company to collect and compile monthly new motor vehicle registration data community by community on a national basis for all cars and trucks in the Chevrolet price class. It was not until 1929 that R. L. Polk & Co. was able to complete arrangements for the regular publication of these data nationally. Once this was done, these data were regularly available to Chevrolet for each of 40,000 communities in the United States, from the largest city to the smallest town. As changes occurred and as new communities were established or as old ones grew, shrank or disappeared, these changes were reflected in the data which were published by R. L. Polk & Co. every month of the year. Originally Chevrolet was the only automobile manufacturer purchasing these community registration data from R. L. Polk & Co. It was well into the 1930's before Ford and Chrysler and other automobile manufacturers fully recognized the value of these data and began to subscribe for these services.

[fol. 380] In developing the community motor vehicle registration system, it became apparent that special require-

ments existed for the very large cities such as New York. The community motor vehicle registration data, as published, showed totals for each of the five boroughs making up New York City. However, each borough contained a large number of new car purchasers and more than one Chevrolet dealer. The available data, therefore, could not be used to measure the individual dealer's sales potential or performance or the service needs of his immediate area. This problem was attacked by developing in the mid-1920's what became known as the "block breakdown." The Borough of Brooklyn, for instance, was subdivided politically into assembly districts and the individual purchasers in the price class were located by district. Thus, instead of looking at the Borough of Brooklyn as a whole, Chevrolet was able to assess individual section and examine the sales potential, the service needs and the market performance of 45 segments of the Borough. This system of "block breakdown" was ultimately developed for almost all of the large cities of the country. Because these special data were very expensive, they were obtained only when a metropolitan area [fol. 381] was being surveyed in depth from a sales, service and dealer organization standpoint.

During the years succeeding 1929, the development of a scientific system for surveying metropolitan areas was one of evolution. The problem was comparatively simple to state under the established objective of matching dealers and the sales potential revealed by the registration data. What we were seeking to determine was the number, size and location of the Chevrolet dealers to be appointed within a defined area so that each dealer would have a market location capable of generating a reasonable profit opportunity on his investment, while assuring that the total dealer organization would be adequate to obtain for Chevrolet a fair share of its price class market and convenient, satisfactory and adequate service to the owners of Chevrolet cars and trucks in the area.

However, the solution of the problem in individual areas was quite complex. The first job was to develop a "block breakdown" of new car registrations by workable segments of the area to obtain data on where the sales potential and [fol. 382] car population were located within the city proper. The next phase was the determination of the proper

dealer locations to serve the area. We experimented with many different factors which could assist us in the selection of the proper dealer locations. The billboard advertising companies regularly conducted studies of traffic flow. Copies of these studies were obtained and were superimposed on a basic map of the city. Another element we had to determine was the locations where most people in the area made their major purchases. We found that plotting the locations of banks, theaters and new car dealerships on the map provided admirable indications of desirable dealer locations. In addition, we made use of surveys and studies prepared by local real estate boards, chambers of commerce, major banking institutions and public utility companies.

By this means, we developed what we called an "ideal dealer organization" for each metropolitan area. That is to say, if there were no Chevrolet dealers and we were starting fresh, what should the dealer organization consist of in number, location and size in the particular metropolitan area. The first problem was to decide where the first dealer should be located. At that time, this was usually the downtown dealer who also had the highest overhead and who, because of his location, attracted business from all over the metropolitan area from both a sales and service standpoint. Once we were able to fix the size, location and sales and service potential of the first hypothetical dealer, we could then develop the same information for the one or more other "ideal" dealer locations which the total sales potential and service needs for the particular area indicated were necessary. This would also involve deciding whether the maximum potential volume and service needs could be better served by one dealer operating at a specified location or by two or more dealers operating at specified locations. This decision was, of course, influenced by the physical factors involved in the particular area as well as the investments and costs of operating that the dealers would face. By this careful process, an ideal total dealer organization would be projected for the area based on the sales and service volume that vehicle registration data over a representative period of years indicated would be required to support the number and size of the dealerships projected.

[fol. 384] The investments necessary to operate a dealership in a metropolitan area have always been substantial. I cannot recall the figures for 1929, but in 1960 dealer investments in the Los Angeles Metropolitan Area, for example, ranged from about \$70,000 for the smallest dealers to as high as \$1,500,000 in a few instances.

We proceeded upon the theory that each dealer's place of business should be so located that he would have sufficient sales (and hence profit) potential to become and remain a Chevrolet dealer at the location. Unless this incentive was offered, the needed location would not remain covered, Chevrolet would lose sales and Chevrolet owners would be unhappy over the lack of convenient service facilities.

The final step in a metropolitan area survey was to relate the existing dealer organization to the ideal and then determine the steps that should be taken and how and when they should be taken to achieve the ideal dealer set-up.

The jarring experiences of the depression years taught [fol. 385] us a number of lessons. With the increasing demand for cars and the fast rise in the business cycle in the late twenties, the car industry had kept appointing more and more dealers so that in 1929 it found itself with more than 51,200 dealers, selling a total volume that year of 4,400,000 cars, an average sales potential of only 86 cars per dealer. Within the next three years—1930 through 1932—the new car volume dropped more than 65%. Some attempts in the early thirties to try to counteract this drop in volume by appointing additional dealers actually worsened the situation. It increased the total dealer investments and operating expenses in the face of a constantly decreasing demand. The increase in dealer outlets reduced the average share of sales that each dealer could hope to capture without improving the total demand for cars. This experience demonstrated clearly that it was the potential in the particular area and not the number of dealer outlets that determined how many cars would be sold.

The depression years also demonstrated that appointing dealers without regard for the potential sales they could reasonably expect to achieve creates a high turnover of [fol. 386] dealers with all its attendant economic losses. During the years 1930 through 1933, more than 15,700 dealers in the automobile industry went out of business.

This was a drastic and painful way to shrink the number of dealers to a size more in keeping with the level of the sales potential. In addition, this attrition was haphazard and indiscriminate so that in some communities there were no dealers at all of a particular make and in others the dealers who were able to survive still faced slim prospects because their number, location and size were still above those required for the shrunken demand.

The high morality of dealers during the depression made it completely clear that carefully planning the number, location and size of dealerships would be meaningless unless it took into account the potential over a period of years—both high volume and low volume years. We could not expect dealers to make or maintain the substantial, long-term investments called for by this projection unless we could expect a sales potential capable of producing a reasonably satisfactory return, using a realistic "average [fol. 387] volume factor" over a period of years. One important advantage that the automobile industry has over most other retail businesses is its ability to know in detail and for any given area the number of car sales made each month by each make and model of car and the ages and total number of cars in operation of each make and model. These data are obtained from public records of motor vehicle registrations. An analysis of these registrations for the previous five or more years furnished a workable and reliable basis for predicting the average sales and service potential that could be expected to exist for the particular area. This expected average sales volume came to be known as the "planning potential."

During the depression years, Mr. Alfred P. Sloan, Jr., then President of General Motors Corporation, became increasingly concerned over the system under which General Motors dealers were being appointed and maintained. In a personal discussion with me in July 1933, Mr. Sloan stated that the right number of dealers of the right size, in the right locations, and implemented with a set of General Motors operating policies to make such an operation effective, was the only long-term answer. In this discussion, [fol. 388] he expressed to me his concern over the increasing need for a dealer service organization to take care of the mechanical needs of the products, particularly in view of

their increasing complexity which stressed the need for an effective service organization and for policies under which General Motors would stand by these products after they were in the hands of the customer.

Metropolitan areas presented the greatest problem. In late 1934, pilot surveys of metropolitan areas were undertaken to develop and perfect techniques for analyzing metropolitan areas throughout the country. At the same time, the viewpoints of representative General Motors dealers around the country were solicited through the formation of the General Motors Dealer Council. These early meetings with dealers were taking place immediately after the worst economic depression in the country's history and the dealers making up the Council represented those who had weathered the financial storm during those trying years. This experience and the past practices of automobile manufacturers in appointing dealers without a realistic appraisal of the sales potential that existed in the vicinity of the dealer's location had dampened the willingness of prospective dealers to invest the relatively large amount of [fol. 389] capital that was needed to operate a dealership. At the initial Dealer Council meetings, it was made clear that something must be done to improve the position and prospects of General Motors dealers, particularly dealers located in the large cities. This conclusion was confirmed by our own analyses which showed that the profit trends for dealers located in the cities having a population of 50,000 or more were by far the worst of any of the dealer groups which data were available.

In September 1935, it was decided to undertake careful field surveys in each of the cities having a population of 50,000 or more to determine the ideal number, size and location of dealers for each of the car and truck divisions—Cadillac, Buick, Oldsmobile, Pontiac, Chevrolet and General Motors Trucks. On completion of each survey, a meeting was held by General Motors executives and the executives of each of the individual divisions to review the survey and reach a so-called "Master Plan" for the number, location and size of the dealers for each of the divisions in that area. Thus the system that Chevrolet had developed for the appointment and location of dealers was extended to General Motors' other motor car and truck divisions.

[fol. 390] The quality of the metropolitan survey work which was undertaken beginning in 1935 represented a great advance from the type of survey made originally in Chevrolet in the 1920's. Permanent and specially-trained personnel were now assigned to this work. The team had available to them the whole body of dealer financial information extending over a long period of years with accompanying trends and analyses for each of the divisions. There was opportunity and time to do as complete a job as the local circumstances required. The making of these field surveys in the late 1930's was also more complex. The whole country was in the process of remaking its geography and the survey of a metropolitan area had to take into consideration the forward planning for the area and what effect it would have on the local dealer organization and each location from which the products of the divisions would be distributed. Each individual community located outside of the central city itself had to be studied to determine its relationship to the central city and other surrounding suburban communities.

Part of the concern expressed by dealers in the mid-thirties related to the past practices of appointing additional dealers or establishing new or additional locations for existing dealers without any advance notice to other dealers and without giving them an opportunity to be heard even though these appointments and new or additional locations might importantly affect their existing investments and future potential. The dealers argued that a person could not reasonably be expected to make or expand the heavy investment required for a particular location with the possibility that at any time additional dealer locations would suddenly be placed around him.

In 1939, a policy for metropolitan areas was incorporated in what became known as the Metropolitan Area Addendum to the Dealer Selling Agreement (Stipulation of Facts No. One, Ex. 7.1). Under this Addendum, executed by the division with each of its dealers located within a given metropolitan area, the division attached a schedule setting forth the maximum number of its dealer outlets for the particular metropolitan area, and the approximate geographical location of each. The Addendum provided that no changes would be made in this number or in any

of their geographical locations unless each of the dealers in the area was given at least 60 days' advance notice of [fol. 392] such contemplated action by the division. Under proper circumstances, a dealer could obtain a "stay of action" by filing a complaint with the newly established Dealer Relations Board. This "stay of action" would remain in effect until the matter was fully reviewed and finally decided by the Board.

The program to match dealers to the areas of sales and service potentials revealed by our surveys, undertaken in the metropolitan areas, could be effective only if there was control over the dealers' location of both their main and branch facilities. This is the reason for the selling agreement provision, which had its inception in 1940 specifically requiring the written consent of the car division before a dealer can establish any branch operations or move the location of any of his facilities. (Stipulation of Facts No. One, Ex. 3.2, p. 10) If dealers are free to set up branch operations or to move the location of their facilities as they please, then all of our careful study and planning can be defeated by the haphazard actions of individual dealers.

Almost from the time that Mr. Sloan became President of General Motors, in the 1920's, he made regular trips into [fol. 393] the field to visit General Motors dealers in their own places of business. He constantly sought first hand and frank information from dealers. For instance, he regularly had a personal representative reporting directly to him, whose function it was to travel into all parts of the country and exchange ideas and information with dealers. The inauguration of the General Motors Dealer Councils in 1934 represented an expansion of this activity and furnished a major and regular exchange of ideas and information between dealers and the top management of General Motors.

Another step toward giving dealers an adequate chance to be heard was taken in 1938 when Mr. Sloan organized the General Motors Dealer Relations Board consisting of the four top ranking officers of General Motors. Although this Board was intended to deal with matters of divisional administration of existing policies, it also served to promote sounder factor-dealer relationships by encouraging discussion between dealers and top management of the

soundness of existing distribution policies or the need for modifying them or even for the adoption of new policies. [fol. 394] In 1956, General Motors adopted the General Motors Dealer Relations Umpire Plan (Def. GM Ex. BV) which took the place of the Dealer Relations Board. The Umpire Plan provided for discussion between dealers and various levels of management of dealer complaints arising out of the relationship between the dealers and General Motors including, among other things, complaints with respect to the termination of or other actions taken under the Dealer Selling Agreement. The Umpire Plan provided that, if the dealer was not satisfied with the decision of management, he could appeal to the Dealer Relations Umpire, a retired Federal District Judge, whose decision would bind General Motors but would not bind the dealer, thus leaving the dealer free to seek legal redress if he were dissatisfied with the umpire's decision.

The occurrence of a second, although less severe, economic dip in 1937 and 1938 confirmed the soundness of the distribution system which General Motors was then seeking to develop. The essential principles of this program were that:

1. The maximum sales performance can best be achieved, with stability and equity by relating the number, size and location of dealers to the sales [fol. 395] and service potential in each individual area.
2. This objective requires a continuing scientific analysis of each community to maintain a "master plan" for that community which will lead to placing the right number of dealers, each of the right size and each in approximately the right location.
3. These objectives should be based on adequate data for an adequate period of time to allow for economic changes that continue to occur.

The start, in 1939, of World War II in Europe brought new and different problems. We anticipated that car production would be curtailed and developed plans for such a contingency. In the summer of 1941, restrictions were imposed and, in February 1942, production was suspended entirely. It was not resumed until October 1945. These

events created two major distribution problems: (a) maintaining a skeleton network of dealers in strategic locations; and (b) assuring the existence of sufficient facilities in these and other locations to provide the service necessary to keep the existing car population operating for the duration of the war. The suspension of car production [fol. 396] created strong unrest and concern among the existing dealers. Many feared the loss of their heavy investments without cars to sell. General Motors sought to have them continue to maintain active service facilities for the duration and appointed authorized service stations in areas where dealers were not available or went out of business.

The end of the war brought the need to rebuild the shrunken dealer organization under the greatly changed economic conditions that resulted from the war. Regular field surveys of metropolitan areas which had been carried on from 1935 to 1941 had been suspended during the war. By 1945, the recruiting and training of new survey teams was undertaken. There was one advantage that the post-war survey teams had over those that operated in the 1930's. They could make more sophisticated and refined studies because many more data were available to them. For instance, they were in a better position to assess each of the local new car markets; the physical facilities of the individual dealer; and the used car market in each individual area.

However, these studies involved a number of new elements that had not been encountered before. There were [fol. 397] the greater population shift and mobility generated by the war and the substantial inflation that had taken place. There were the pent-up demand for new cars and the expansion of the total demand for cars. There were the substantial changes in the make-up of metropolitan areas as a result of the great upsurge of suburban communities. The survey teams had to consider the short term and long term effects of all of these elements and how they would affect the eventual master plan for each metropolitan area. Another question that had to be resolved was whether the increased sales and service potential should be satisfied mainly through additional dealers or principally through expansion of existing dealers. The answer was affected by the increase in the amount and quality of the facilities and

equipment required for a dealership to operate and, with the substantial inflation, the much higher capital investment and operating costs that were called for by each dealer. The conclusion reached was that, where circumstances permitted, it was more efficient and economical and generally preferable to have the existing dealer expand his facilities and services than to add a dealer.

The making of these metropolitan area surveys has continued, except for the World War II period, for nearly 40 [fol. 398] years. The experience gained and the data accumulated over this period on each metropolitan area in the country are of great value. Today, a survey group consists of trained men from both the General Motors Sales Section and the division for which the survey is being made. Using Chevrolet as an example, even before going into the field, the survey team reviews and collects a great deal of statistical and economic information on the area and its Chevrolet dealers. For instance, it makes a detailed financial analysis on each dealer who has operated in the area during the previous ten years. It establishes both a "planning potential" for new cars and an "owner service potential" for the area, based on a detailed study of historical car registration data. It has available statistics developed over the years indicating the amount of customer labor and parts that the average owner of a 1, 2 or 3 year old car operating in the area will probably need. The survey team also reviews any special situations in the area which may affect any of the sales or service potential. The service phase of the study made of each dealership includes an analysis of the number of repair orders written over a period of years.

[fol. 399] The field portion of the survey is made by specially trained men from both the General Motors Sales Section and Chevrolet and includes personal visits to every Chevrolet dealership in the area, an inspection of all of the dealer's physical facilities, an analysis of his investment, the notation of any unusual aspects of the dealer's operations, and a meeting with the dealer himself. After all of the analysis and field work has been completed and analyzed, the survey team makes preliminary selections of prospective dealer locations, its evaluation of existing

dealer locations, and present and prospective growth areas within the entire metropolitan area. It also makes specific recommendations for the number, size and location of Chevrolet dealers. This ideal dealer set-up and the existing dealer organization are then compared and conclusions reached as to: (1) existing dealers who are in logical locations; (2) existing dealers who are in illogical locations; (3) new dealer locations that should be considered to attain the desired objectives; (4) existing dealership locations which should be eliminated; and (5) existing dealerships in logical locations whose facilities or performance do not appear to be adequate for those locations.

[fol. 400] The recommendations of the survey group are made completely independent of the Chevrolet field and Central Office personnel as well as of the General Motors Distribution Staff. When the survey group has completed its work, the survey and its recommendations are thoroughly discussed and reviewed by the local zone management, the regional management and the Central Office management of Chevrolet. At the same time, they are reviewed and discussed in detail by the General Motors Distribution Staff. The final step in the process is the reaching of an agreement between Chevrolet and the General Motors Distribution Staff. All of this process of review and discussion is involved before a final "master plan" is arrived at upon which Chevrolet may act in the particular metropolitan area as, for example, by establishing a new dealer location or by changing an existing dealer location or the like. In the interest of maximizing sales, General Motors makes a great effort to avoid the haphazard location of dealer outlets.

The goal in all of this is the achievement of what we call the General Motors Quality Dealer Program. By that term we mean the right number of dealers at the right places, all properly equipped with facilities and properly [fols. 401-402] staffed, each dealer to be a sound, capable businessman who sets high standards for himself in the conduct of his business, who maintains satisfactory sales and service performance, and who develops his sales and service potential. The Quality Dealer Program contemplates that the dealer shall have a sufficient sales potential

for a reasonable profit opportunity on a continuing basis so that he may conduct his business in accordance with that program.

Rudolph F. Schreitmueller.

Subscribed and sworn to before me this 16th day of June, 1964.

Edwin J. Dunn, Notary Public.

State of New York, No. 03-1046175, Qualified in Bronx County.

Certificate filed in New York County.

Commission Expires March 30, 1965.

[fol. 403] AFFIDAVIT OF TOM CARRELL

Tom Carrell, being first duly sworn, deposes and says:

I am now and at all times since 1959 have been a member of the California Legislature, being the Assemblyman representing the 41st Assembly District of California; that I am now Chairman of the Assembly Transportation & Commerce Committee, among others, and during the 1961 legislative session I was a member of the said Committee. This Committee has jurisdiction over legislation pertaining to transportation in general including motor vehicle legislation.

I am a duly authorized Chevrolet dealer in San Fernando, California, and have been a Chevrolet dealer since 1937; my dealership is known as Tom Carrell Chevrolet and was formerly known as Pollard Carrell Co. The dealership has been a member of Foothill Chevrolet Dealers Association at all times since the Association was organized.

In January, 1961, I introduced in the California Legislature Assembly Bill No. 417, which established a State Motor Vehicle Commission to regulate and license motor vehicle dealers and salesmen in order to prevent frauds, impositions and other abuses existing in the retailing of [fol. 404] motor vehicles. The Bill provided that an automobile dealer was required to have an established place of business with

"display area for the vehicles and accessories offered for sale and in the case of a dealer where new vehicles are sold, he must maintain parts and service facilities sufficient to perform the services to his purchaser as required by the new car warranty."

I have known Glenn S. Roberts for more than 20 years as attorney for Foothill Chevrolet Dealers Association and also as attorney for other automobile dealer associations; that in the latter part of March or early part of April, 1961, Martin Pollard, then President of Foothill Chevrolet Dealers Association and also Chairman of the Legislative Committee of the Southern California Motor Car Dealers Association told me that the three Chevrolet dealer associations in Southern California had retained Mr. Roberts to survey the selling of new automobiles through discount houses and that the information obtained would be available to me for submission to the Legislative Committee considering Assembly Bill No. 417.

From May 2 to May 6, 1961, a business conference and golf tournament of the Southern California Motor Car [fol. 405] Dealers Association was held in Palm Springs, California. On May 5, 1961, at this business conference and golf tournament I had a conference with Mr. Roberts who advised me that his survey disclosed that the retailing of new automobiles through discount houses was being carried on in many cases in violation of the law which required such dealers and their salesmen to hold a license and to display such license at the place of sale.

Mr. Roberts then stated to me that he had done legal research regarding filing suit for an injunction to prevent the selling of motor vehicles through discount houses in violation of the law but had reached no conclusions regarding such legal action. He also suggested that Assembly Bill No. 417 be amended to include a provision whereby a trade association of ten or more licensed motor vehicle dealers could maintain a suit for injunctive relief against violators of the provisions of the law.

I then told Mr. Roberts that Assembly Bill No. 417 would be presented to the Assembly Transportation & Commerce Committee or a sub-committee during that month, May, 1961. I requested him to attend the hearing of the Legis-

lative Sub-Committee to present information which he had obtained and to assist in securing favorable consideration of the Bill. I also requested that he supply me with a form [fol. 406] of amendment to the Bill as he had recommended.

Shortly after my meeting with Mr. Roberts in Palm Springs, he caused to be sent to me in Sacramento a proposed amendment to the Assembly Bill and the following is a true copy of such document:

"Amendment to Assembly Bill 417,
To add the following:

Section —: Injunction Against Prohibited Acts: Procedure:

Whenever any person, firm or corporation has engaged or is about to engage in any acts or transactions which constitute or will constitute an offense against this chapter, the Superior Court of any county, on application of the California Motor Vehicle Commission or of ten or more licensed motor vehicle dealers, or of an incorporated trade association of ten or more licensed motor vehicle dealers, may issue an injunction or other appropriate order restraining such conduct. Proceedings under this Section shall be governed by [fol. 407] Chapter 3 of Title 7, Part 2 of the Code of Civil Procedure, except that no undertaking shall be required in any action commenced by the said Commission.

Source: Section 2436 Business and Professions Code
Approved in: Complete Service Bureau v. San Diego County Medical Association (1954) 43 Cal 2d 201"

A hearing was held on May 24, 1961, in Sacramento by a Sub-committee of the Assembly Transportation & Commerce Committee to consider Assembly Bill No. 417. Mr. Roberts appeared at this Committee hearing in support of the Bill. The Sub-committee adopted the amendment proposed by Mr. Roberts which became Section 9333 of the Bill. The Sub-committee thereupon approved the Bill which was thereafter adopted by the Assembly in final form on June 3, 1961. Assembly Bill No. 417 was thereupon pre-

sented to the California State Senate where it was held for further consideration.

Tom Carrell.

Subscribed and sworn to before me this 4th day of May, 1964.

Francis H. Crowe, Notary Public in and for said County and State.

My Commission Expires October 21, 1967.

[fol. 407a]

[File endorsement omitted]

[fol. 408] APPENDIX C TO REPORTER'S TRANSCRIPT OF
PROCEEDINGS—Filed June 1, 1964

[fol. 409] AFFIDAVIT OF FRANK C. DYKEMAN

Frank C. Dykeman, being first duly sworn, deposes and says:

1. I am, and since 1957 have been, a partner in Price Waterhouse & Co., Certified Public Accountants, and have been, since that date, the partner in charge of the company's Management Advisory Services Department for the Pacific Coast. This department offers consultation and advice in the field of financial administration and regularly makes studies and analyses of business organizations in the course of performing such services.

In 1939, I received the degree of B.B.A. from the College of the City of New York, and was elected to the Beta Gamma Sigma scholastic honorary society in the business administration field. I have been a Certified Public Accountant in the following states since the dates indicated: New York (1946), Michigan (1952) and California (1957).

I joined the staff of Price Waterhouse & Co. in New York in 1941, and became a member of the Management Advisory Services Department in 1949. In 1957, upon admission as a partner in the firm, I was transferred to Los Angeles.

I am a member of the New York, Michigan and California Societies of Certified Public Accountants, of the American Institute of Public Accountants, of the American Management Association and of the National Association of Accountants. I am Chairman of the Management Services Committee of the California Society of Certified Public Accountants.

2. Price Waterhouse & Co. has made a study for the purpose of determining the answers to four questions. I was one of the partners who supervised, controlled and directed this study and have done, supervised or approved all aspects of the study. As a result of this study, I have reached the conclusions stated herein.

3. The four questions relate to the 1960 operations of Chevrolet dealers in the Los Angeles metropolitan area as

defined in Stipulation of Facts Number One, Ex. 4.2. These questions are:

- (a) Were the service and parts departments operated profitably or unprofitably?
- (b) What reduction in new car volume could have [fol. 411] been absorbed by low volume dealers (700 or less) before incurring an overall operating loss?
- (c) Assuming no reduction in new car volume, what reduction in new unit selling price could have been absorbed by low volume dealers (700 or less) before incurring an overall operating loss?
- (d) Did customers who purchased from a dealer through a discount or referral house pay higher or lower prices for Chevrolet passenger cars than ordinary retail customers who purchased directly from that dealer?

4. Our conclusion on Question (a) was that in 1960 the service and parts departments of the Chevrolet dealers in the Los Angeles metropolitan area operated at a substantial loss overall. This is summarized in Def. GM Ex. BA, a copy of which is attached hereto. It shows that the 76 Chevrolet dealers located in the Los Angeles metropolitan area had a median loss of \$14,100 in the operation of their service and parts departments. Of these, 53, or 70% of [fol. 412] such dealers, lost money in these departments. Their median loss was \$20,500. Of the 23 dealers who made a profit in 1960 in these departments, the median profit was \$11,900.

5. In answering Question (b) with respect to the ability of low volume Chevrolet dealers in the Los Angeles metropolitan area to absorb a reduction in new car volume without incurring an overall operating loss, we found that generally the smaller the dealership the smaller is the percentage reduction of his new car volume which can be absorbed before an overall loss results. Thus, as is set forth in Def. GM Ex. BB, a copy of which is attached hereto, our studies show that a 300 new car dealer would operate without any profit if his new car volume was reduced 12% or 36 units per year. Similarly, a 400 new car dealer would oper-

ate without any profit if his new car volume were reduced 17% or 68 units per year; a 500 new car dealer if his new car volume were reduced 33% or 165 units per year; a 600 new car dealer if his volume were reduced 21% or 126 units per year; and a 700 new car dealer if his volume were reduced 30% or 210 units per year.

6. Similarly, in our study of the ability of the low volume Chevrolet dealer to absorb a reduction in unit selling price at a constant volume of new car sales without incurring an overall operating loss (question (c)), we also found [fol. 413] that the smaller the dealer in terms of new car volume, the smaller is the reduction in unit selling price which can be absorbed before an overall loss results. Thus, as is set forth in Def. GM Ex. BC, a copy of which is attached hereto, based on a computed retail sales price of \$2,652 per car, our study shows that in the Los Angeles metropolitan area a 300 new car dealer would operate without any profit if his unit selling price were reduced 1% or \$27 per car. Similarly, a 400 new car dealer would operate without any profit if his unit selling price were reduced 1.4% or \$38 per car; a 500 new car dealer if his unit selling price were reduced 2.9% of \$77 per car; a 600 new car dealer if his unit selling price were reduced 1.8% or \$48 per car; and a 700 new car dealer if his selling price were reduced 2.6% or \$69 per car.

7. On Question (d), we found that there was no appreciable difference between the prices paid by customers who purchased Chevrolet passenger cars from a dealer through a discount house or referral service and the prices paid by ordinary retail customers who purchased directly from that dealer. Def. GM Ex. BD, a copy of which is attached hereto, lists the conclusions reached in our study of the prices paid for new current model Chevrolet passenger cars purchased in 1960 from each of the Chevrolet dealerships that did a statistically significant discount house or referral service business. This exhibit shows that [fol. 414] overall the customers buying directly paid a median markup of \$220 over dealer invoice, while the customers buying indirectly through discount houses or referral services paid a median markup of \$235 over dealer invoice. Four of the seven dealers involved sold their cars directly to their ordinary retail customers at median prices

which were lower than the median prices for the cars which they sold through their discount house or referral service outlets. The highest median gross profit difference among these four was \$28 and the lowest \$4. Of the other three, one had a difference in favor of the customer who bought through the discount house or referral service of \$11; one a difference of \$6; and the last a difference of \$1.

8. We derived the conclusions stated in paragraphs 4 through 7 of this affidavit from studies formulated and made by Price Waterhouse & Co. in accordance with generally accepted accounting principles and statistical methods. Paragraphs 9 through 12 of this affidavit describe the manner in which these studies were formulated and made and explain how each conclusion was derived.

9. The conclusion that the Chevrolet dealers operate their service and parts departments at a substantial loss was derived from an analysis of the 1960 financial statements [fol. 415] of each of the 76 dealers located in the Los Angeles metropolitan area. With the exception of the dealer's administrative overhead, the financial statements reflected the allocation of expenses among the various operating departments. Accordingly, the only allocation of expenses which we had to make was of the administrative overhead. This was allocated to the combined service and parts departments in the same proportion as other overhead expense had already been charged such combined departments. By reflecting the allocated administrative expenses in the departmental profit or loss shown on the financial statements, we were able to compute the profit or loss for the service and parts departments of each of the 76 dealerships. We then listed the figures obtained in order of size and determined the median loss. We next listed separately the 53 unprofitable and the 23 profitable dealers and determined, respectively, the median loss and profit for each group.

By the median loss, I mean that half of the dealers lost less and half lost more. By the median profit, I mean that half of the dealers made a greater profit and half made a smaller profit. When a few extremely large or small values occur among a group of values that are generally quite concentrated, the median is a far better method of determining the average than is the arithmetic mean. This is because

the arithmetic mean is disproportionately affected by extreme values and as a result creates an erroneous impression. Since the median is not so distorted, it is the single most representative and accurate measure of individual members of a group of values. For example, the arithmetic mean loss of the 53 unprofitable dealers is \$25,400, but this is not a representative figure because one dealer lost as much as \$131,600 and only 19 of the 53 dealers lost more than the arithmetic mean. 34 lost less. Therefore, it is more meaningful to represent the performance of the individuals comprising the group by using the median measure since it at once tells us both the fact that 26 dealers lost less than \$20,500 and 26 lost more as well as the fact that the concentration of values is close to this figure. Thus, a dealer who loses money in his service and parts operations has a 50-50 chance of losing less than \$20,500 and a 50-50 chance of losing more.

As stated in *Statistics: An Introduction to Quantitative Economic Research* by Daniel B. Suits, p. 33 (Rand McNally & Company, 1963), "The median takes as 'typical' the true middleclass item. It is the best average to use in evaluating the performance or status of individuals. The median incomes of two communities will give a better comparison of how individuals fare in the two places than can be had from the mean, which is influenced by extremes of wealth or poverty." Exhibit BE, a copy of which follows, portrays an example from another textbook which illustrates the reason why this is true.

[fol. 417] TAKEN FROM HIRSCH, INTRODUCTION TO MODERN STATISTICS, p. 45

(The Macmillan Company, 1957)

EXHIBIT BE



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"Average annual income here's about \$12,000. There's fifty of us clears \$2,000 and one fellow makes half a million"

In the example depicted the Average as determined by the MEDIAN is \$2,000 while the Average as determined by the ARITHMETIC MEAN is \$11,765.

[fol. 418] 10(a) Our conclusions concerning the volume reduction which could be absorbed by low volume Los Angeles metropolitan area Chevrolet dealers without incurring an overall operating loss are based upon a study divided into two distinct phases. The first phase involved a study of the 1960 financial statements of the entire group of 76 dealers to establish for each class of dealer by size grouping an estimate of their gross profit and expense items as well as profit before bonuses and income taxes.

The second phase involved a study of what might happen to each size class of low volume dealer based upon the 1960 financial results if volumes of new car sales were reduced and what volume reductions by size class would result in an approximate break-even position for the various classes of dealers.

(b) As to estimating gross profit and expense items by classes of dealers: There are three types of gross profits earned by dealers; (1) gross profit on new and used cars, (2) gross profit on parts and services and (3) miscellaneous net income. There are four types of expenses; (1) variable new and used car selling expenses, (2) semi-fixed new and used car selling expenses, (3) semi-fixed service and parts expenses and (4) fixed expenses. To portray each of these gross profits and expense items for each of the 76 dealers we prepared seven separate graphs with the vertical line (or Y axis) of the graph representing the [fol. 419] amount of the particular gross profit or expense and the horizontal line (or X axis) the number of new cars sold. First, the values of all 76 individual dealers were plotted to obtain the graphical relations and then, the regression line having been determined, the average values of dealers within a size classification were plotted on the final graph.

Attached as exhibits are copies of the graphs used in this study:

- (1) Combined gross profit for new and used car departments (GM Ex. BF).
- (2) Combined gross profit for service and parts departments (GM Ex. BG).
- (3) Net miscellaneous income of the entire dealership (GM Ex. BH).
- (4) Combined variable selling expenses for the new and used car departments (GM Ex. BI).
- (5) Combined semi-fixed expenses of the new and used car departments (GM Ex. BJ).
- [fol. 420] (6) Combined semi-fixed expenses of the service and parts departments (GM Ex. BK).
- (7) Total fixed expenses of the dealership (GM Ex. BL).

The first step in constructing each graph was to plot the the financial data of each of the 76 dealers on each graph and to average these data for dealers in similar classes by volumes of cars sold. The three largest dealers did not conform to a statistical pattern and for this reason their data were excluded from the graphs. This resulted in a number of points plotted on each graph. To give meaning to these points it is necessary to draw on each graph what is known in statistical terms as a regression line or line of best fit. In nontechnical language a line of best fit is the one line which best gives meaning and permits best interpretation of the points plotted on a graph. This line of best fit can be approximated by manually drawing on a judgment basis a line through the points on the graph or it can be computed mathematically by a statistical method known as the "least squares method." We used the "least squares method" in drawing the lines of best fit on the first six graphs and the judgment method on the seventh graph.

On graphs BF through BL, the gross profit or expense [fol. 421] for any volume of new car sales may be read directly from the regression line. It may also mathematically be derived by use of the linear regression equation, which is a more precise method. We used the linear regression equation.

These graphs were then used to prepare five tables, one each for dealers in the 300 (Def. GM Ex. BM), 400 (Def. GM Ex. BN), 500 (Def. GM Ex. BO), 600 (Def. GM Ex. BP) and 700 (Def. GM Ex. BQ) classes of new cars sold annually. Attached is a copy of each of those exhibits.

The purposes of these tables are to illustrate three conditions: (1) estimates of what each class of low volume dealers experienced during 1960 in realizing gross profits and incurring expenses shown in the first dollar column of each table, (2) estimates of what would likely occur in each class if volumes of new car sales decreased, and (3) estimates of the volume reduction at which the break-even point of each class of dealer would be reached.

(c) As noted above, the tables comprising Exhibits BM through BQ were prepared to illustrate the impact on profits before bonuses and income taxes of reductions in volumes of new cars sold. The first column of each table is taken directly from the respective points on the graphs

[fol. 422] which comprise Exhibits BF through BL. For example, on Exhibit BM, the table for the 300 unit class of car dealers, gross profit on the sale of new and used cars as plotted on Exhibit BF is \$113,800. The second amount is gross profit of the service and parts departments and is taken directly from Exhibit BG and so on. Each of the remaining amounts in the first column is taken, respectively, from the remaining graphs, Exhibits BG through BL.

The computations for the other columns of the tables comprising Exhibits BM through BQ illustrate the anticipated dollar effect on the various gross profit and expense items caused by reductions in new car sales. To develop these computations, it is necessary to understand what accountants generally refer to as gross profit and expense behavior. To anticipate gross profit and expense behavior each item of gross profit and expense is classified either as variable, semi-fixed, or fixed. The important distinction between these classes is concerned with the manner in which each item of gross profit or expense changes when volumes change.

Variable gross profit and expense items are the most responsive to volume change, for by definition they vary in proportion to volume changes.

Fixed expenses normally are the direct opposite, for [fol. 423] within ranges of volume changes these expenses remain constant.

Semi-fixed expenses are an intermediate type between variable and fixed items because a part of each semi-fixed expense changes with volume and a part remains constant as a fixed expense.

The seven gross profit and expense items graphed in Exhibits BF through BL were classified as follows in preparing the tables comprising Exhibits BM through BQ:

The seven gross profit and expense items graphed in Exhibits BF through BL were classified as follows in preparing the tables comprising Exhibits BM through BQ:

- (1) Gross profit on new and used cars as a variable item.
- (2) Gross profit on parts and service, by assumption, was held constant.
- (3) Miscellaneous net income as a variable item.

- (4) Variable selling expense as a variable item.
- (5) Semi-fixed new and used car expenses as a semi-variable item. Based upon our analysis of these expenses we estimated that 60% of these expenses should be considered as fixed with 40% as variable [fol. 424] able.
- (6) Semi-fixed service and parts expense, by assumption, was held constant in keeping with classification (2).
- (7) Fixed expenses were classified as fixed items which would not change within the range of volume changes covered by our study.

In general, where charts are drawn for gross profit and expense items it is possible to estimate the reduction in gross profits or expenses merely by reading from the charts the amount of gross profit or expense for the reduced volume level. This practice was followed for the variable items such as gross profit on new and used cars, miscellaneous net income, and variable selling expense. For example, Exhibit BF illustrates that gross profit for new and used car departments for sales of 300 cars annually is \$113,800. To compute the gross profit for new and used car departments for a 10% reduction in sales, we refer to the identical exhibit and read from the graph the gross profit for sales of 270 cars (300 minus 10% of 300) which is \$102,700.

Gross profits on parts and services and semi-fixed service [fol. 425] and parts expenses were held constant at the initial level of sales of the dealer on the assumption that reductions in new car sales would not affect the service and parts income or expenses. This assumption was made since a reduction in the new and used car volume of any particular dealer would not necessarily result in a decline in the number of new Chevrolets sold in his area nor would it necessarily affect the number of service outlets operating in his area.

Fixed expenses, as the classification implies, were held constant for the volume changes studied. The remaining expenses, semi-fixed new and used car expenses, could not be interpreted from the graph for volume changes for a rather unique and complex reason. These semi-fixed and fixed expenses are different for a dealer having a reduced

volume of a certain level than they are for a dealer having an initial volume of that level. This is so because the dealer having the larger initial volume makes certain fixed commitments on the assumption that his business would operate at that level. Once having made these commitments, he cannot quickly reduce them to coincide with what they might have been had he originally geared his operation to a lower volume.

To compute the effect of volume changes on semi-fixed new and used car expenses, a separate study of the behavior [fol. 426] pattern of these expenses for the dealers in the 300 to 700 category of annual sales was made. Based on this study it was our opinion that approximately 60% of these expenses generally could be classified as fixed and 40% as variable. To determine the effect of volume changes on this type of expense a rather simple mathematical procedure was applied as follows:

As illustrated on Exhibit BJ the semi-fixed expenses of the new and used car department for 300 car sales is \$48,900. The fixed portion is equal to $\$48,900 \times 60\%$ or \$29,340 while the variable portion is equal to \$48,900 less \$29,340 or \$19,560. At a 10% reduction in volume the variable portion is equal to the total variable amount (\$19,560) less 10% (\$1,956) or \$17,604. The sum of the fixed portion (\$29,340) and the variable portion (\$17,604) is \$46,944. This sum is posted to Exhibit BM in the column headed "10% reduction or 270 cars sold."

The figures for profit before bonuses and income taxes shown for the different volume levels on Exhibits BM through BQ were developed merely by subtracting the expense items from the gross profit items. These exhibits are the basis for our conclusion expressed in paragraph 5.

11. Our conclusions concerning the reductions in unit [fol. 427] selling prices which could be absorbed by low volume Los Angeles metropolitan area Chevrolet dealers without incurring an overall operating loss, like our conclusions concerning volume reductions, were derived from an analysis of the financial statements of the 76 dealers located in the area.

A reduction in the sales prices of new passenger cars has an effect upon three major items in the financial statements of the dealers: (1) total dollar retail sales of new

passenger cars, (2) commissions to car salesmen in the new car department and (3) the profit before bonuses and income taxes. All other items of the total income and expense statement are not significantly affected by reductions in sales prices of new passenger cars and for this reason can be excluded from consideration.

Our first step was to prepare a graph form, a copy of which is attached hereto as Def. GM Ex. BR, portraying the relationship existing in 1960 between new passenger car sales receipts and the number of new cars sold. As explained in paragraph 10, a line of best fit was drawn through these data for the 73 dealers and a regression equation was developed. The three largest dealers were excluded for the reasons stated in paragraph 10. A graph, a copy of which is attached hereto as Def. GM Ex. BS, was drawn to portray the relationship between sales commissions paid on new cars sold and the number of new cars sold. A line of best fit and a regression equation was also prepared for this table.

Our interpretations of these graphs and computations made to show the effects of price reductions are illustrated in Def. GM Ex. BT, a copy of which is attached hereto. On this exhibit a separate column reflects the anticipated results of price reductions for 300, 400, 500, 600 and 700 car dealers. The first and second lines of Exhibit BT showing retail sales and sales commissions are taken directly from the graphs, Exhibits BR and BS. The third line subtracts the expense of sales commissions from retail sales to arrive at what may be termed a net sales amount. The fourth line, profits before bonuses and income taxes, is taken directly from the first columns of Exhibits BM through BQ which were prepared as described in paragraph 10. It is this profit which must be eliminated before a dealer reaches his break-even point. This is accomplished by reducing the net sales amount by the amount of that profit.

By calculating the percentage of original net sales amount which this reduction represents we determined the percentage reduction in original sales receipts. The percentages so calculated for each volume class are listed in [fol. 429] the fifth line of Exhibit BT. It ranges from a 1% price reduction for dealers in the 300 volume class to a 2.6% price reduction for dealers in the 700 volume class,

except that in the case of the 500 car dealer it would be 2.9%.

Line 6 of Exhibit BT was prepared to express the percent reduction figures of line 5 in terms of the dollar price reductions per car. Based upon our examination of the financial statements of the 76 dealers we computed a representative retail sales price of new passenger cars of \$2,652. By applying the percentage figures of line 5 to this selling price of \$2,652 we computed the reductions per car in selling prices which would place each dealer in a break-even position. These amounts ranged from \$27 per car to \$77 per car as illustrated in Exhibit BC.

12. In reaching the conclusion that there was no appreciable difference between the prices paid by ordinary retail customers who purchased Chevrolets directly from the dealer and the prices paid by customers who purchased Chevrolets through discount-house and referral-service outlets, we first analyzed the 1960 sales invoices, purchase orders, sales contracts, sales journals and other records of the discount house and referral services listed in Paragraph 28 of "Stipulation of Facts Number One" which were [fol. 430] made available to Price Waterhouse & Co. in the manner set forth in Paragraph 36 of said stipulation. From those books and records we determined that only seven Chevrolet dealers sold automobiles through discount houses and referral services in a statistically significant volume during 1960. Moreover, the combined discount house and referral service volume of these seven dealers was 96% of the total. Thus, by studying the books and customer folders of these seven dealers in addition to the books and records of the discount houses, we were able to determine both the price paid by the purchasing customer for each new Chevrolet obtained through a discount house or referral service and the respective dealer invoice cost of the selling Chevrolet dealer. We were thereby able to calculate the markup paid by the customer on each transaction. This in turn provided the basis for comparing the markups paid by the customers who purchased through discount houses and referral services and the markups paid by the ordinary retail customers who purchased directly from the seven dealers. An IBM card was prepared for each new Chevrolet sold by each of the dealers in 1960. Every IBM card

which represented a sale of a 1959 model or of a 1960 model sold after the introduction of the 1961 model on October 7, 1960, was identified, was so marked and did not enter further into our study. In this way our study was limited to new current models Chevrolets. We also identified and eliminated all demonstrator sales. We then reviewed the [fol. 431] remaining sales with the dealer and other knowledgeable dealer personnel for the purpose of having them identify each direct sale made to a buyer whose status, position or purchasing power at the time gave that buyer a purchasing advantage with the respective dealer which ordinary retail customers did not have. This was done to insure that the markup paid on ordinary retail sales made directly by the dealer would not be underrated by reason of these generally low markup sales. Affidavits listing the sales so identified were made by the personnel involved, and on the basis of those affidavits each such sale was eliminated from our study.

The sales remaining were all either ordinary direct retail sales or sales through discount houses or referral services. However, several of the seven dealers sold some automobiles through discount houses or referral services other than those stipulated to be the ones involved in this case. Those transactions were also eliminated. This was done by our identification of such sales from the dealers' customer folders or by identification of such sales by affidavits of dealer personnel. Elimination of those sales left only ordinary direct retail sales and sales through stipulated discount houses and referral services. The latter group was identified by us through our study of the discount-house and referral-service books and records and of the dealers' customer folders. At one dealership this identification [fol. 432] was supplemented by the affidavits of dealership salesmen involved in such sales. We found that the stipulated discount house records were incomplete as to some transactions and had to eliminate them from our study because of insufficient data. The remaining IBM cards were marked with the dealer invoice cost for the car. In addition, each card was marked to show the model number and year of such automobile and the month during which it was sold to the customer. All of these data, excepting only the net selling price paid by customers pur-

chasing through discount houses (but not referral services), was obtained from the dealers' sales journals with adjustments in some instances from other journals. Each IBM card was marked with the page and line number of the sales journal from which such information was taken. The net selling price paid by customers who purchased through discount houses was taken from the books and records of the discount houses involved. The cards for both the sales through discount houses and referral services and the ordinary direct retail sales of each dealer were placed in an IBM machine and the markup over dealer invoice cost calculated on each transaction. The cards were then placed in a sorter which produced for each of the seven dealers the median markup paid in 1960 by customers purchasing from such dealer through discount houses and referral services and the median markup paid in 1960 by ordinary retail customers purchasing from each dealer directly. The [fol. 433] sorter next produced the median markup for those respective categories for all seven dealers as a whole. The individual and overall median markups so obtained form the basis of our conclusion concerning this part of our study and are the figures contained in Def. GM Ex. BD.

As stated in Paragraph 9, the median is the better measure of averages for comparison of the performance of individuals. Therefore, in this portion of the study comparing the performance of dealers selling directly to retail customers and the performance of dealers selling through discount houses, we have again used the median as the measure of averages.

Frank C. Dykeman.

Subscribed and sworn to before me this 2nd day of May, 1964.

Everett A. Gibbs, Notary Public in and for the State of California.

My Commission Expires July 1, 1965.

(Seal.)

[fol. 434] DEPOSITION OF FRANK C. DYKEMAN

Frank C. Dykeman, having been first duly sworn, deposed and testified as follows:

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Cross-examination.

By Mr. Blecher:

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[fol. 435] Q. Can you estimate for us, Mr. Dykeman, the total number of man hours that were used or consumed by all of the people who participated in preparing the various exhibits, apart from the lawyers? I am confining this to the Price Waterhouse people and the General Motors accounting people who assisted you, and any others who may have assisted you in that connection.

A. I can be rather specific in terms of answering as to the Price Waterhouse time. I would say it was approximately 15,000 man hours. I can be less specific on the General Motors time but I would say it probably would be quite close to that amount of time.

Q. In the course of your becoming familiar with the issues in the litigation, and some of the testimony, did you [fol. 436] become familiar with the people to whom those dealers selling through discount houses sold in terms of geographic distribution?

A. Yes. We analyzed the sales journals of seven dealers and we looked at the sales records of 12 discount houses. And just by looking at the names and addresses of the customers we had an idea of geographic distribution.

Q. What did you observe in that connection, Mr. Dykeman?

A. Well, we observed that people would essentially deal with dealers in their own locality. We found that a great part of the sales were made within a dealer's locality.

We were also quite surprised to find that a number of customers would travel substantial distances to referral houses in order to purchase a car and would go to nearby

discount houses. We were surprised with the mobility of customers.

Q. I want to make sure that I understand accurately what you said. Is it your testimony that you observed that as a general rule the persons who purchased directly from a dealer tended to buy from a dealer within the broad outlines of the neighborhood in which they lived?

A. Generally speaking, yes.

Q. And that you found in contrast to that, in the case of people purchasing cars from discount houses or referral [fols. 437-438] services, that they would sometimes travel great distances to make such a purchase?

A. Yes.

Q. Did you also observe in that context, Mr. Dykeman, whether or not those persons who purchased from some of the discount houses, for example the Chico Stores or the Consumers Mart of America, would be receiving a car delivered by a dealer some distance from the location of the discount store with whom the customer dealt?

A. Yes.

.

[fol. 439] Mr. Blecher:

Q. Page 21 of your affidavit, Mr. Dykeman, Paragraph 12, which begins at Line 17, you reach the conclusion with respect to the question which has been captioned (d), "... that there was no appreciable difference between the prices paid by ordinary retail customers who purchased Chevrolets directly from the dealer and the prices paid by customers who purchased Chevrolets through discount house and referral service outlets . . ." and then you go on to explain in some nature what you did. That isn't in fact the conclusion you reached, is it, Mr. Dykeman?

A. Yes.

Q. The conclusion you reached is in fact that there was no appreciable difference between the prices paid by ordinary retail customers who purchase Chevrolets directly from a dealer and the prices paid by customers who purchase Chevrolets through discount houses and referral service outlets from that same dealer. Doesn't that more accurately state the conclusion that you reached?

A. Yes. For this reason, for a bulk of these referral discount transactions, which were the referral transactions, the customer had to purchase from that dealer. He had no option. He had to purchase from one of the seven dealers that we studied. There was no option at all. He couldn't purchase from anybody else in the Los Angeles area except these dealers, these seven dealers that we studied.

Q. What you mean is that a customer who elected to buy through some of the discount houses or referral services, had in connection with the delivery of the car no option as to the dealer who would make delivery, or in your language who would make the sale. Is that what you mean?

A. I am not including discount houses in the answer. I am saying for referral houses this customer had to go to one of the seven dealers whom we studied. He had no other choice.

Q. So we can pin this down in the record, you mean if a man walked into a Fedco store and received a referral to Warren Biggs, if he was going to buy under this referral system via Fedco he would have to buy the car from Warren Biggs. That is what you mean.

A. Yes.

Q. What you did in making the conclusion that there was no appreciable difference in prices was to compare the price, the median price, paid by that customer via the referral with the price he would have paid to Warren Biggs had he gone there directly without the referral.

A. Right, yes.

Q. And you don't really mean that there is no appreciable difference in the prices paid by ordinary retail customers who purchase Chevrolets directly from the dealer and the prices paid by customers who purchase Chevrolets through discount house and referral service outlets in general, do you?

A. We mean that exactly. Because in general he could not buy through anybody else than these seven dealers.

Q. He could have bought from a dealer, couldn't he?

A. Not as a referral transaction, no.

Q. Let me ask you what basis you undertook to make a comparison showing the median price at which a person would buy a car from Warren Biggs under the referral

system from Fedco as contrasted with the price that he would have paid to Warren Biggs had he come in off the street without a referral? What was your basis for that, sir?

A. By analyzing the records of the discount houses we [fol. 442] found that these discount houses sold a number of cars. These sales were made through essentially seven dealers. We therefore examined the records of these seven dealers on an invoice-by-invoice basis, and much as the affidavit describes, we purified the sales data in order to get as comparable a series of situations as possible.

We compared the prices paid by a customer who purchased through Biggs on a referral transaction with the prices paid by regular customers of Biggs who came in through regular channels in order to determine whether the referral customer was receiving a price advantage over the regular customer.

Q. From the dealer from whom he bought under the referral system.

A. Yes. Because he had no alternative but to buy from the seven dealers that we studied.

Q. Now, stated conversely, what you really undertook to state here was that in the case of Warren Biggs and in his relationship with Fedco, he sold to those customers referred by Fedco at prices which were not appreciably different from the prices that he sold to regular customers who did not come from Fedco.

A. Right.

Q. But that is not the same, is it, Mr. Dykeman, in terms of statistical analyses as stating that the customer who [fol. 443] bought the car from Warren Biggs under the referral system did not in fact save money by such a purchase, is it?

A. It is stating the same thing, in my opinion.

Q. You were aware, on the basis of the information you previously testified to, that a good number of the people bought through a referral service traveled a great distance to purchase the car from the referral service dealer, have you not?

A. Yes.

Q. And you were aware, for example, that Warren Biggs

was dealing with two of the four Fedco stores in the Los Angeles area, were you not?

A. Yes.

Q. And you were aware of the locations of those stores with whom he was dealing?

A. Yes.

Q. What were those locations, Mr. Dykeman?

A. I haven't committed them to memory. They are listed in the stipulation.

Q. You knew that Warren Biggs was getting referrals, for example, from the Lakewood store?

A. Yes.

Q. And you know that as a resident of this area that Lakewood is a considerable distance from the location of Warren Biggs' showroom on Vermont Avenue near Hollywood?

[fol. 444] A. Yes.

Q. Let me ask you, Mr. Dykeman, whether or not you in fact undertook to conduct a study which showed what the median prices of dealers in the general vicinity of Lakewood were as compared with the prices that the referral service customers paid to Warren Biggs through Fedco?

A. No. There was no basis in our opinion for selecting Lakewood as a sample. There was absolutely no basis for selecting Lakewood.

Q. Weren't you aware of the fact that Warren Biggs had in substance said that he was selling cars on the referral service system to people who in the ordinary course of business would not have come to him for a car?

A. Yes.

Q. Then what significance is there to determine what they would have paid Warren Biggs had they come in off the street with what they paid to Warren Biggs via referral service when the testimony was that most of the people wouldn't have come to Warren Biggs off the street?

A. Well, in my opinion it is of great significance, because if you want to compare things you must compare like situations. And Warren Biggs was one of seven who sold in both manners.

And Lakewood, these other stores, other than the seven, they offered no opportunities at all for referral sales. So

[fol. 445] we couldn't go to those stores and compare how an individual made out via a referral sale versus a regular sale. It was a non-existent condition.

Q. But you thought it was an existent condition to compare what a man would have paid where ordinarily he wouldn't even have gone to purchase a car with what he actually paid in a given situation.

A. Yes. Because that is a fact.

Q. And you didn't undertake to study the situation that I hypothesized to you at all.

A. Mr. Blecher, you must realize this, to study these seven dealers took approximately 10,000 hours of time. This is the big part of that sum total of time that we referred to a while ago.

We would have liked to have studied the whole 76 to see what happened in the whole area, but the time requirements to purify all of these data so that you had a decent basis of comparison would have been staggering.

Then you search for another type of sample and you have no basis for any other type of sample than the seven dealers who operated in this manner, offering both referral sales and regular sales. Had you selected any other sample that sample could have been challenged.

Q. Do you see any difference at all, Mr. Dykeman, in saying on the one hand that Warren Biggs didn't sell to [fol. 446] the Fedco referred customers at any appreciable difference in price as compared with the prices he sold to regular customers, the difference between saying that on the one hand, and saying on the other hand that the customer who bought the car from Warren Biggs didn't save any money by comparison with the price he might have paid based on averages to dealers in his neighborhood from which he came?

A. No. That last part is a non-significant comparison, in my opinion, because he had no opportunity to do that.

Q. You are not seriously saying, Mr. Dykeman, that the man that bought the car from Warren Biggs through a Fedco referral did not have an opportunity and in fact did not shop and receive quotations from dealers in his immediate area.

A. Surely, he did that.

Q. Did it ever occur to you why it was that a fellow

would travel from Lakewood up to Hollywood, or roughly into Hollywood, to buy a car from Warren Biggs?

A. Yes. He thought he was getting a price advantage.

Q. Then why didn't you undertake to make some study demonstrating whether or not in fact he was operating under an illusion that he was making a price saving as compared with the study which you actually made?

A. Because again, Mr. Blecher, we had to pick a sample because of the tremendous amount of work that was involved in analyzing dealer records. Ten thousand man [fol. 447] hours of time is a significant job.

There was no reason for selecting Lakewood over any other area. We had to find a basis for selecting a sample. And there is no better basis than selecting as a sample those stores which operated in the two methods which we are comparing. This goes to the basis for your sample and it's a very logical basis.

Q. It is logical even though you recognize that the time you made it, Mr. Dykeman, that in the ordinary course of events the people who sold through discount houses to a customer would not have had any opportunity of selling to those customers without the benefit of the referral service business.

Mr. Mitchell: Now, wait a minute. You may go ahead.

Mr. Blecher: So that the question is clear in his mind, Mr. Leibovitz, would you please read it back to him.

(The reporter read the pending question.)

The witness: If I interpret your question asking if there were not a discount house certain people would not have gone to Biggs, for example?

Mr. Blecher:

Q. Correct.

A. That's right, I recognize that.

Q. Then how can you reach the conclusion that in general the fellow that purchased from Biggs through a discount house did not save any money at all or that there was no appreciable difference?

[fol. 448] A. The reason he would travel was that he was under the illusion of anticipated savings. Based on our

study he made no saving as compared with regular customers.

Q. Where do you get this idea, Mr. Dykeman, that people are running around under illusions that they are saving money?

A. All I did was study the facts here and that is what the facts indicate, Mr. Blecher. I don't know what people do or why they do it.

Q. Isn't it a fact that your study therefore does not establish, assuming that they are statistically sound, that the person who bought a car through any one of the seven discount house dealers did not in fact save money as compared with the dealers in the general vicinity of the area from which he came?

A. We did not study those other dealers.

Q. When you say you didn't study, isn't it a fact, Mr. Dykeman, that you made some form of statistical sampling to try to find out whether you could prove that fact?

A. No. Because what you must remember is that these seven dealers' records were not taken from the financial statements. They were taken from line-by-line analysis of these sales journals. And a lot of the information, if memory serves, maybe 35 or 40 per cent of the transactions were eliminated in this study. Therefore you can't go from [fol. 449] the financial statement to the result of the study and make a comparison because of the large number of eliminations. These eliminations are spelled out in Paragraph 12.

Q. What you are telling me is that it was too much work to make that type of comparison.

A. What I am saying is that we should—we had two choices, as I see it, either study the entire 76 and come up with some result, or a study, which in my opinion is the better study, of those dealers that offer both types of buying opportunities and see how customers made out.

Q. Let me invite your attention, if I can, Mr. Dykeman, to your Exhibit BD. Do you have any facts at all in your knowledge, told you by anyone, or acquired in any manner whatsoever, which would indicate that a person who bought a car from one of the discount houses with whom Citizens Chevrolet was doing business was not free to walk into

Warren Biggs Chevrolet and attempt to buy a car off the street from him?

A. He could do that.

Q. And if he in fact had bought a car from Warren Biggs the probability is that he would have fallen within the median used in preparing or arrived at in preparing this study, namely \$249 over dealer invoice. As a matter of statistics that would be true, wouldn't it?

A. That would be the better probability.

[fol. 450] Q. If he did that and he paid \$249 over dealer invoice to Warren Biggs but in fact purchased the car from a discount house through Citizens at a median price of \$223, that fellow would in fact have saved some money, wouldn't he?

A. Let's say on the basis of your hypothesis, I would imagine so, yes.

Q. On the basis of your own hypothesis you say he would have saved \$11 from Allen Gwynn, comparing the median gross profit under "regular" as compared with referral discount house; right?

A. Yes.

Q. And that assumes, does it not, that the fellow that bought from Gwynn via a discount house or referral service would have paid the median price of \$232 to Gwynn had he come in off the street?

A. Yes.

Q. And it is on that basis that you conclude that the customer purchasing through the discount house from Gwynn would have on the average saved \$11.

A. Well, we conclude from factual analysis, and you are raising a lot of hypothesis. You can take any hypothesis. These are factual analyses, and all we are saying, Mr. Blecher, is this, that the fellow who came in off the street and bought from Biggs stood the best chance of paying \$249 markup. The fellow that was referred to Biggs on a [fols. 451-453] referral sale stood the best chance of paying a markup of \$254. We are not hypothesizing anything because this is the result of an intensive study.

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[fol. 454] Mr. Blecher:

Q. In short, Mr. Dykeman, in order to make any comparison as to whether or not a fellow who bought through [fol. 455] a discount house saved any money you have to assume what he would have paid at another dealer had he gone through a discount house, don't you?

A. Well, not necessarily. You have to compare what his alternatives are. And for discount sales he has more alternatives than referral sales. So his alternative would be a discount house or any other dealer.

Q. And you would agree, would you not, Mr. Dykeman, that such a comparison would be meaningful, would it not, in determining whether or not a fellow, for example, from Orange County who bought a car from a CMA store through Citizens would have saved money in buying in the manner that he did?

A. I would think that you would have to then take the entire 76 dealers and make a study for all 76 dealers. If you selected any one dealer or any group of dealers it could be questioned completely, on what basis did you select them. You would have no basis at all. You either have to take—To answer that question you would have to take the entire 76 dealers.

Q. In order to make it totally accurate.

A. Yes. And not be subject to criticism for the sample that you selected.

Q. But you did observe statistically that most of the people that bought a car through a dealer, as opposed to dealing with any form of referral service, bought the car in [fol. 456] proximity to their home, that is from a dealer in proximity to their home.

A. Yes.

Q. So the fellow who lives out in Orange County would be likely to have bought a car from a dealer in Orange County, barring the discount house.

Mr. Mitchell: I object to that on the ground that this witness is not qualified to say where a man would likely buy. As a matter of fact the evidence shows that Biggs, for example, sells all over the place. This man is not qualified to say where Biggs' customers come from or where anybody else's do.

Mr. Blecher:

Q. From an examination of the underlying documents, Mr. Dykeman, you observed, did you not, that most of the Orange County dealers who were selling to people were selling to people in Orange County in large measure.

A. Yes, in large measure they were.

Q. Can't you conclude on that basis, Mr. Dykeman, that many of the people in Orange County buy a car from an Orange County dealer?

A. Many do, but many travel. We were quite surprised with the number that would travel.

Q. Travel in buying direct or through a discount house?

A. In both ways, yes. We found that a location certainly has value. There is convenience in location. But we were surprised to see that people will travel, will shop an area.

[fol. 457] Q. Trusting to my arithmetic, and subject to correction by your counsel, Mr. Dykeman, let me ask that the reporter mark the Cone Bros. Financial Statement as Exhibit 211 for Identification.

(The document referred to was marked by the notary public as Plaintiff's Exhibit 211 for Identification and was returned to counsel for the plaintiff.)

Mr. Blecher:

Q. Let me show you the Cone Bros. Financial Statement, of Anaheim, which the reporter has marked Plaintiff's Exhibit 211, and I direct your attention to Page 4. Using my arithmetic, subject to correction by your counsel, if you compute the average gross profit on Cone Bros. Chevrolet from Line 12 of Page 4 you would arrive at an amount of \$355.89. That figure would not be wholly accurate, would it, Mr. Dykeman, as a figure because there are certain additions and deductions that should be made from that.

A. In my opinion it would be quite insignificant.

Q. I thought earlier you said it would be a meaningful measure.

A. No. I said it would have a little value. It would give you just what you said, according to the financial statements, the gross profit per car is so much. It would have that meaning.

But I must make one thing clear. Exhibit BD does not

[fol. 458] show you how the dealer made out, it shows how the individual made out. And there is a tremendous difference between how a dealer made out and how an individual made out. And this difference can best be explained perhaps by referring to a sale made of a Corvair.

Now, if a customer purchased a Corvair on April 30 and paid, just to take a rough figure, \$2600, and another customer purchased the same car the next day and paid the same amount, each customer would have made the same deal. But because of an incentive plan that came into being on May 1 the dealer made a different gross profit on those sales.

As far as BD is concerned it analyzes how customers made out. And we cannot go from the financial to BD because Schedule BD excludes fleet sales, it excludes non-arm length transactions, it excludes a great deal of transactions that are incorporated in the financial statement.

So my answer is that it has no significance in terms of relating that figure to the conclusions we reached on BD.

Q. You don't really mean that it has no significance. What you mean is that the significance is affected by certain computations made for the purpose of preparing Exhibit BD that are not reflected on the financial statement.

Mr. Mitchell: Wait a minute. I object to that upon the ground that it assumes a statement of the witness that he didn't make. He didn't say it had no significance, he said it had no significance with relation to the figures and the [fol. 459] results shown on BD.

Mr. Blecher: That is what I mean, Mr. Mitchell. Let me rephrase it.

Q. You don't mean, Mr. Dykeman, that it has absolutely no significance in comparing the average gross profit on the financial statement by dividing gross profit by number of new units sold in relation to Exhibit BD. What you mean is that they are not really on a par and that some adjustments would have to be made to bring it on a par.

A. And for that reason in my opinion it has no significance.

Q. Approximately what would be the range of the adjustment that would have to be made to the financial statement?

A. You can't make a generalization on that. It varies. It varies completely dealer by dealer. And we just wouldn't

know for Cone Bros., for example, because we did not make this study.

Q. But you did make that sort of a study on the basis of the seven dealers used in Exhibit BD, didn't you?

A. Yes.

Q. You computed the average gross profit from the financial statement and compared it with the median used in the column on the right-hand side for regular sales?

[fol. 460] A. We didn't do that. It has no significance here.

Q. But you did it just as a matter of informational interest to see how they compared, didn't you?

A. We did that in the volume studies. We were looking at gross profits of new and used cars dealers. It had no significance on this Question (d).

Mr. Mitchell: Question (d)?

The Witness: Question (d), or Exhibit BD.

Mr. Blecher:

Q. Let me ask you this. You have a column on Exhibit BD that shows regular price for median price to dealers, do you not?

A. This here column.

Q. Right. Did you attempt to make any study which compared the prices in that column with the prices which would have been reflected by dividing gross profit by number of new units sold on the financial statement?

A. No.

Q. But you did compute the average gross profit as reflected by the financial statement with some figure at some stage, did you not?

A. We really went down to the new car department for volume.

Q. What did that reflect in relation to your study?

A. Nothing for this study.

Q. It reflected something in relation to your other study?

[fol. 461] A. Well, a volume study would merely be a point on the graph which we plotted.

Q. Is it your testimony here that you wouldn't have any idea as to the maximum range of the adjustment that would be necessary one way or the other to bring the

figures which would be derived by dividing the gross profit by number of units sold on Line 12 of the financial statement into line with your figures with the regular column on BD?

A. Yes.

Q. You don't have any way of doing that?

A. No.

Q. Again subject to correction, I worked that out, Mr. Dykeman, and let me read down the column to you and see whether or not you can draw any observations from that. The Biggs figure rounded off would be \$268, the Bruder figure—all of these rounded off—would be \$222.

Mr. Mitchell: What are you reading from now?

Mr. Blecher: I am reading from some notes on my copy of the exhibit.

Q. A statement as to what the average gross profit would be based on Line 12 of Page 4 of the financial statement. Citizens would be \$168, Courtesy would be \$200, Gwynn would be \$232, Porter would be \$236, West Adams would be \$232.

Mr. Mitchell: Will you give me Mr. Blecher's testimony? [fol. 462] (The reporter read the record as requested.)

Mr. Blecher:

Q. You note some variations in each case except Gwynn, which happens to work out to be identical.

A. It is interesting.

Q. Those variations are accounted for by a number of factors, are they not, Mr. Dykeman, namely one would be incentive plan payments which would reduce the dealer's cost and increase his gross profit; correct?

A. Yes.

Q. Others would be special circumstances sales or what you described as less than arm's length transactions which would have the effect of decreasing the dealer's gross profit.

A. Yes.

Q. And others would be fleet sales which are ordinarily sold at prices under the ordinary retail sales, which have the effect of pulling down the dealer's gross profit.

A. Yes.

Q. If you accumulate all these factors, and perhaps some other ones, you would be able to work out statistically, as you have done, what the dealer's median gross profit would have been, or the price paid by the customer would have been, as you did on Exhibit BD.

A. That would have been a tremendous oversimplification, because when we made these individual dealer studies we found some, for example, would have a 40 per cent fleet sale situation, others would have a 10 per cent fleet or a [fol. 463] non-arm's length transaction.

We also noted some dealers would make accounting adjustments to their records which referred to situations of the prior year. For some reason or other by not making a correct accounting entry in '59 they suddenly realized that they had made this error and corrected it in 1960. This accounting error would find its way in the financial statement but would have no impact on BD, the study which was developed from the customer's standpoint.

So you have so great a range of possibilities of change and inconsistencies between the two that anything like that would be a tremendous oversimplification, would not be accurate and would not be realistic.

Q. I realize it wouldn't be accurate, Mr. Dykeman.

A. Or helpful.

Q. But would you take a look down the two columns, the one I have just read to you, and which you have inserted on your exhibit, and the ones which were printed in the exhibit, and tell me whether or not on the basis of simply looking at these you can determine whether or not the adjustment that would be required in most cases would be relatively insignificant.

A. My first observation is that your penciled figures go both ways. Sometimes they raise the price—they raise the [fol. 464] median and sometimes they lower it. Now, which way do you go?

Q. Either way. Except in the case of Citizens where my computation lowered his price by \$27, none of the others vary more than a few dollars.

A. No. Biggs is —.

Q. Biggs is 18 higher, Citizens is 27 lower under my

computations, and the rest of the range is within \$9, is it not?

A. Yes.

Q. Courtesy is substantially lower.

A. Courtesy is \$23 difference.

Q. Would you say that on the basis of this simple observation that the adjustment, let us say, would in no case exceed \$40 on the low side?

A. You just can't say that.

Q. You think it would be as much as \$100 lower.

A. It could be any amount. Any reasonable amount.

Q. What would you say is a reasonable amount on the basis of what we have done in the case of these seven dealers?

A. I would just be guessing. I just don't know, to be truthful.

Q. Mr. Cone's gross profit computed on the basis of Line 12 of Page 4 of Exhibit 211 works out to be \$355.89. Mr. Dykeman, as you sit here now and as you compare the last column on the right-hand side, referral house column, and assuming any reasonable adjustment you want to [fol. 465] make, isn't it fair to conclude that a fellow that purchased a car from Citizens at an Orange County discount house at the median price of \$223 was saving money as compared with Cone?

A. We would have to purify the data of Cone in exactly the same way that we purified the data for these seven to come up with any conclusion. We did not do that. And this represents what happened to the dealer, this is what happened to the customer.

Mr. Mitchell: When you said "this" the first time, you referred to the Cone Bros. Financial Statement.

The Witness: Yes.

Mr. Mitchell: When you said "this" the second time you referred to Exhibit BD.

The Witness: Right.

The financial statement and Exhibit BD represent two entirely different situations that can only be made comparable, in my opinion, by a detailed investigation as we did for these seven.

Mr. Blecher:

Q. In answering my question, then, you would have to say that it is conceivable in your mind that an adjustment of Cone from \$355 down to \$223, or somewhere in the neighborhood of \$132, would be possible if you made such a refinement?

A. It might be. There might be an accounting adjustment in Cone's records that would account for a substantial [fol. 466] sum of money. I just don't know.

Q. And you didn't undertake to try to find out.

A. Again we had these two alternatives, either study the 76 or study what we felt was an intelligently selected sample. And we couldn't study the 76 because of the tremendous amount of time required.

Q. Do you know now, Mr. Dykeman, whether or not the fellow that purchased from a discount house from Citizen at a discount house located in Orange County saved any money whatever as compared with what he would have paid on the basis of such a refined study that would have been made in Cone Bros. in Anaheim?

A. We just don't know.

Q. The answer to that question would be the same if I substituted for Cone Bros. some of the other 69 dealers in the Los Angeles area?

A. That's right.

Q. You just don't know.

A. That's right.

Q. But you did know when you made these studies that people came long distances from their residences to buy a car through a discount house or referral service.

A. Yes.

Q. You knew, for example, that people were coming in [fol. 467] from San Bernardino, which is 60 miles, down to Warren Biggs to buy cars, didn't you?

A. Yes.

Q. Did you ever try to find out what the median would have been, regular sales, for dealers in the San Bernardino area?

A. No.

Q. Your study was confined, was it not, to models which were current during the year 1960, that is more specifically

1960 models sold up until October 7, 1960 and thereafter for 1961 models sold through December 31?

A. Yes.

Q. Why did you eliminate the non-current models, Mr. Dykeman.

A. We eliminated the non-current models because we felt that was the equivalent to buying at an advantage. It gave the buyer an advantage. It was not a good mode of comparing between a discount house, referral sales and ordinary regular sales.

Q. Who suggested that elimination?

A. Ourselves.

Q. Did you start out to make any study on non-current models?

A. No.

Q. You just arbitrarily decided at the beginning of the [fol. 468] study to eliminate all non-current models?

A. As the criminal trial progressed points were brought into evidence showing the advisability of eliminating such items. And we followed the trend of thinking resulting from the criminal trial.

And if memory serves, that was one of the basic reasons. The criminal trial made somewhat apparent that the data should be purified and we followed that concept of purifying data. We sat back and analyzed what data should be purified and these were the things that we decided should be purified.

Q. At any time did you observe or were you informed, Mr. Dykeman, that the discount house referral service dealers in fact were selling few, if any, non-current models during a current model year? That is to say that after the introduction of the 1961 models in October of 1960 that the discount house customers weren't buying any 1960 models through the discount houses?

A. That was one reason for the purification.

Q. Did it ever occur to you why that was the case?

A. No. We found it to be a fact.

Q. Just an observable fact and you didn't bother to do anything further about it.

A. Right.

Q. Did you make any more refined comparisons dealing with the 1960 model sold up through October 7, 1960 and

[fol. 469] the '61 model sold thereafter, did you bring those down and try to make any separate study?

A. No.

Q. You were aware, were you not, that such a study was made and put in evidence during the criminal trial?

A. Yes.

Q. You were aware of the fact that it showed in the case of the criminal trial a result which was unfavorable to General Motors.

A. It didn't bother us because we were essentially concerned with taking a full year's transactions in order to express our opinion—our conclusion on how a customer made out during 1960, and this was the best basis of information to answer that question.

Q. The question is: Did you know whether or not the result offered in the criminal trial was adverse to the conclusions sought to be offered by General Motors?

A. We didn't pay any attention to it.

Q. And you didn't think that there would be any value in making a separate study of 1960 models sold in 1960 and 1961 models sold in 1960?

A. Yes.

Q. Your answer is that you didn't think that would have any value.

[fol. 470] A. We didn't think that would have any value because we wanted to take a full calendar year of operations.

Q. Did you observe any tendency in the course of this study for prices to be higher to the customer, Mr. Dykeman, in regular sales during the early months of the introduction of the new model, that is, let's say, from October through December 1960? Did you observe that the gross profits or selling prices were higher?

A. From this massive data that appeared as though it might be true.

Q. And did you think that there was any value in making the comparison for that time period when average gross profits or selling prices appeared to be higher, regular versus discount house?

A. No. Because there is no reason for picking any period. We tried to get an entire calendar year of operation.

Mr. Blecher: I will ask the reporter to mark this book as Plaintiff's Exhibit 212 for Identification. It is a volume of loose-leaf pages which has the cover caption "Prepared By Statistical Tabulating Corporation."

(The booklet referred to was marked by the notary public as Plaintiff's Exhibit 212 for Identification, and was returned to counsel for the plaintiff.)

Mr. Blecher:

Q. Can you identify what that book is, Mr. Dykeman? [fol. 471] A. Yes. This is the listing of all of the individual customer sales included in our Exhibit BD. It includes sales of the seven dealers referred to in Exhibit BD.

Q. And the first page of this book is a sort of code page explaining what some of the symbols on the other pages mean; is that correct?

A. Yes, sir.

Q. And that is pretty well self-explanatory.

A. Yes.

Q. Let me refer you to the page which follows Page 40 in this book, and which was captioned "Summary Table Dealer Biggs." Over on the right-hand side there is "Averages." And under one caption there is the heading "Median Markup," which is the column you used in the preparation of Exhibit BD, is it not?

A. Yes, sir.

Q. And over in the other column there is a column headed "Arithmetic Mean Markup."

A. Yes, sir.

Q. The arithmetic mean markup contrasted to median markup shows a balance in favor of the discount house.

A. Yes, sir.

Q. Why did you choose to use the median markup method?

A. The median is a more representative method of showing what happens to the individual customer. It is more [fol. 472] representative for this reason. The arithmetic mean is merely a summation of all values divided by the number of values. It includes extremes at the low end and it excludes at the high end. It averages all values.

Mr. Mitchell: Did you say "excludes"?

The Witness: It includes extremes at the low end and includes extremes at the high end. It includes everything.

Where there are undue extremes, where there are more extremes on the high side than the low side, or where there are extremes only on the high side and no extremes on the low side the arithmetic means gives an unrepresentative picture of the massive data that you are trying to characterize.

When we made our study of these non-arm's length transactions, or transactions through regular dealers, we excluded all of the low sales, all of the non-arm length sales. Therefore in the dealer records we have extremes on the high side and very few on the low side.

The arithmetic mean, when computed from the dealers' records, gives undue importance to those extremes.

The median is an average also but it is an average of position. And what the median says is that 50 per cent of the customers made out better and 50 per cent made out poorer. In our opinion it is a better description of how customers made out through regular dealers.

[fol. 473] Now, you will notice that in analyzing dealer sales through discount houses the arithmetic mean and the median are a lot closer than they are in analyzing sales through regular dealerships. The reason they are a lot closer is that we have not eliminated any items from the discount-referral house sales. We have extremes on the low side, extremes on the high side. And when you have a situation like that the arithmetic mean tends to approach the median.

In our opinion the median is far more representative than the arithmetic mean.

Mr. Blecher:

Q. Would you do me a favor, subject to the approval of your counsel, and make a note on your working copy of Exhibit BD of these differences as we proceed.

In Biggs, the column "Regular" would be 264, the column "Discount House" would be 252. I take it the explanation you gave us would be true in the case of each dealer for whom there is such a summary table, all seven dealers, in fact.

A. Yes, sir.

Q. In the case of Bruder the figure would be——

Mr. Mitchell: Just a minute. Your statement is now over with. You were going to ask a question. You made a statement, I take it. That is your testimony. Now you are going to ask a question, I take it.

Mr. Blecher: I don't recall making a statement, Mr. [fol. 474] Mitchell. I asked him if his testimony would be the same if he talked about all the other seven dealers.

Mr. Mitchell: Let us have another question and then we don't have your statement.

Mr. Blecher:

Q. For the record, then, the arithmetic mean average concerning Bruder Chevrolet would be \$254 regular sales and \$244 discount house sales. And that again shows, would it not, Mr. Dykeman, a slight balance in favor of the discount house as compared with your original study based on the median?

A. Yes.

Mr. Rosiello: Did you mean Bruder?

Mr. Blecher: Yes. That is what I said.

Q. Turning to Citizens Chevrolet the arithmetic mean figures would be 201 for regular sales and 223 for discount houses. And that would show a balance in favor of Citizens but less of a balance than your original study based on the median.

A. Yes.

Q. In other words, the use of the arithmetic mean in the case of Citizens would be more favorable to the discount house transactions than your use of the median; is that correct?

A. Yes.

Q. We will turn to Courtesy. Your arithmetic mean in [fol. 475] the case of Courtesy would show \$253 for regular sales and \$231 for discount house sales. And that would show a balance in favor of the discount house sales in contrast to your median study which shows a balance in favor of the regular sales.

A. That's right.

Q. Then we will go to Gwynn. His summary shows an arithmetic mean average for regular sales of \$246 as against \$220 for discount house sales. And that shows a balance in favor of the discount house as compared with your median study showing the balance in favor of the discount house but in a lesser amount; is that correct?

A. Yes.

Q. And then we go to Ernie Porter. And his summary tables shows an arithmetic mean for regular sales of \$239 and a discount house mean of \$212. That shows a balance more heavily in favor of the discount house than the original balance reflected by your median study.

A. Yes.

Q. And West Adams Chevrolet, your arithmetic mean for regular sales is \$241 and the discount house is \$222. That shows a balance more heavily in favor of the discount house as compared with your original study based on the mean, does it not?

A. Yes.

Q. Observing the differences, Mr. Dykeman, between the [fol. 476] mean of the discount house sales and the median of the discount house sales in that column we find that there is a much smaller rate of variation, much smaller degree of variation in those sales than when we compare like figures in the regular column.

A. Yes.

Q. And that is due, you say, because of the elimination of the special circumstance sales.

A. Yes. We purified the data on the regular sales, eliminating many of the sales which were very low in markup because of non-arm's length transactions, demonstrator cars, et cetera. But we did not eliminate any of the sales to customers at high markup. We included all of those.

Q. In making the elimination or purification for the purpose of your study BD what you attempted to do, Mr. Dykeman, was to put all of the sales study on a comparable basis, did you not?

A. Yes.

Q. And in doing that you had to eliminate fleet buyers who, by reason of their purchase and volume, normally get a price advantage.

A. Yes.

Q. And it wouldn't be fair, would it, to compare prices at which a fleet customer paid with prices which an ordinary person paid?

[fol. 477] A. That was the reason for the elimination.

Q. And it wouldn't be fair, would it, to consider in making a statistical analysis of the sort undertaken in Exhibit BD to include sales made by a dealer to his wife, or to his relatives or to his employees, where there is little, if any, profit to the dealer.

A. That is why we eliminated those, yes.

Q. So what you wound up with in Exhibit BD is comparing wholly the same thing, namely ordinary people buying at arm's length, in one case through a discount house and in another case directly from the dealer.

A. No, not necessarily. Because we felt there would be reason to eliminate some of the high sales. There are certain high sales in there such as an attorney of the dealer buying through the dealer who is rendering service to the dealers. There are non-arm's length transactions like that on the high side that we, with the same type logic, eliminated sales to friends, to employees or to relatives, could have been eliminated on the high side because of reciprocal types of operations. I will buy a car from you, you take my service as an attorney or an accountant or a plumber, or what have you. We did not eliminate those sales although we could have found valid reasons for eliminating a number of that kind of sales.

Q. How many could you have found basis for?

A. We didn't study it.

[fol. 478] Q. The fact of the matter remains that in each case the variants between the study made on the basis of arithmetic mean as compared with median is evidence of the fact that there were many sales made by the dealers at relatively high prices in the regular channel of distribution whereas there were very few, if any, such sales made by the dealer in their discount house method of distribution.

A. There could be few high priced sales that would distort an average, not many. There were some.

Q. Did you undertake to make a study of those?

A. No.

Q. Subject to correction by your counsel, or by yourself, Mr. Dykeman, if you are called upon to sign this deposition,

we have undertaken to make such analysis. And in the case of Warren Biggs we find with respect to sales made to purchasers over \$400 that there were 58 such sales in this regular channel distribution and only two to the Fedco customers. Can you draw any conclusion from that?

A. Only that there might be a number of people who deal with the dealer through other channels, reciprocal services and some people are not price conscious. That would be a conclusion that I could draw.

Q. In the case of Bruder we found that of the 600 cars sold in the regular channel of distribution that 74 had a price of \$400 or more above the dealers cost and that there were no such transactions in respect to cars he sold to [fol. 479] Fedco customers. Do you draw any conclusion on the basis of those figures, subject to correction?

A. The same as previously stated.

Q. Wouldn't it be fair to conclude on the basis of those observations, Mr. Dykeman, that the discount house dealer sales made through discount houses had the effect of insulating the customer against paying excessively high prices?

A. All I could say is that the discount had a narrow range—a narrower range than the dealers. And that there were certain people buying from dealers who paid a higher markup than would have paid through discount houses.

Q. Assuming these figures that I have given you to be accurate, wouldn't it be fair to say that the discount house purchaser was in less danger of paying a high markup?

A. Well, I don't know that I would call a reciprocal-type trade a dangerous trade. There are good business reasons for paying a high price. And furthermore many people may pay a high price to get better service, better maintenance and repairwork, better dealer association. This is not a danger that you are speaking of, this could well be a logical conclusion by a customer to pay a price that would give him priority in terms of his dealing with the dealer.

Q. Something that the customer would voluntarily do?

A. Some advantage that he is getting for it.

[fol. 480] Q. What advantage might he get that you are aware of?

A. I am just hypothesizing now. I just don't know.

Q. In other words, you are saying that my conclusion that I have suggested to you is not valid.

A. Is not valid, yes.

Q. And that there are good and sound reasons why people would want to pay \$400 or more.

A. Yes.

Q. Or in the case of one fellow with Bruder he would pay over \$1,000 over the dealer cost?

A. I don't know that.

Q. And you don't think it is just as a matter of statistical analysis removed from any of the subjective dealings that may have taken place in some of these instances that it is fair to include that the discount house purchaser was insulated against paying a higher gross markup than the regular purchaser was?

A. No. Because I have no way of putting a value on these reciprocal deals and the extra service that these people would get.

Q. That they may have gotten but that you don't know about?

A. That I don't know about.

Q. And you don't know about how many reciprocal deals there may have been?

[fol. 481] A. Right.

Q. There may have been one or five.

A. We did not study the reciprocal deals.

Q. I am going to ask you if you will take a look at your study BD. In this study you don't find any instance at all, do you, Mr. Dykeman, where the saving purportedly reflected by this study BD to a discount purchased exceeds \$11. That is the case of Gwynn where a discount purchased median is \$221 and the regular median is \$232.

A. That is right, yes.

Q. I am talking only about the balance in favor of the discount house was never more than \$11.

A. Yes.

Q. Now, if you take a look at Exhibit BC, Mr. Dykeman, that exhibit purports to show on the basis of other studies that we will discuss that a minimum price reduction of \$27 in the lowest group of dealers would be necessary in order for a dealer to arrive at the break-even point; is that correct?

A. Yes.

Q. And we have now concluded on the basis of your own

studies, Mr. Dykeman, that no discount house customer was, according to your own studies, on the basis of the median saving more than \$11 by buying through the discount house.

A. Yes.

Q. Wouldn't it be fair to conclude on that basis, Mr. [fol. 482] Dykeman, that based on your own figures that the discount house sales, selling prices of cars through the discount house channel of distribution were not sufficiently low in this area in 1960 to cause any dealer even to approach the break-even point?

A. No, that is not a correct assumption because BC does not deal with an individual dealer. It deals with typical dealers. And as a matter of fact individual dealers were below the break-even point in 1960.

Q. As a matter of fact, then, you would have to make an analysis of the individual dealers in order to determine whether or not any savings which might have been affected by purchasing through a discount house would have any effect on the dealer's operation, wouldn't you?

A. If you deal on an individual dealer basis you would certainly have to study individual dealers, yes.

Q. In short, Mr. Dykeman, your study BC is based on a so-called typical dealer, is it not? It is a statistical average.

A. Yes.

Q. And there isn't any one dealer that in any way conforms to that statistical pattern, is there?

A. Not any single individual, but all conform. The value of BC is to take from a mass of individual situations and find the best decision rules that portray all of these individual situations. These are the best decision rules that portray the 76 or 73 dealership situations rather than any single dealership situation.

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[fol. 485] FRANK C. DYKEMAN, having been previously duly sworn, deposed and testified further as follows:

Cross-examination. (Continuing)

By Mr. Blecher:

Q. I would like to turn back to the price comparison study for just a minute, Mr. Dykeman. I think you testified earlier this morning that you, in determining how a study was to be made, considered that there were two alternatives available, that is studying the seven dealers or studying all 76; is that correct?

A. Yes, sir.

Q. You had available, did you not, most of the records [fol. 486] showing the areas in which customers buying from a discount house or through a referral service were purchased, did you not, areas in which those folks lived?

A. Yes. That would be on the sales invoices of the discount houses.

Q. It would have been possible for you, on the basis of that information, to have made some form of tabulation or study showing the communities in the Southern California area from which the preponderance of those folks came from, where they were located, wouldn't it?

A. Yes.

Q. Did you at any time give any consideration to making a price comparison which would have compared on the one hand prices paid through the discount house or referral service with the median retail price charged by dealers in the general vicinity from which the preponderance of those folks came?

A. No. Because they were quite scattered. And it would involve a great number of studies, a large number of samples.

Q. Did you consider at all, for example, singling out dealers in the Orange County area for that purpose?

A. No.

Q. When you say "No," you mean that you never gave any consideration to doing that at all?

A. I mean there was no reason for singling out the [fol. 487] Orange County dealers.

Q. Wasn't it your observation that of the 1500 some-odd

sales made through discount houses or referral services in 1960 that a large number of those were in Orange County?

A. No, that was not so. It was quite scattered.

Q. On the contrary, did you observe that a relatively small number were made in Orange County?

A. No. It was just a general distribution with no one area showing any importance over another.

Q. I take it then that you did make some geographic breakdown to determine whether or not a single area did show a preponderance.

A. No. We looked at the invoices and just by continuous handling of the invoices and looking at the invoices we got a feeling of widespread dispersion.

Q. In making the analysis as to the effect of a reduction in either selling price or gross volume of the 76 dealers you used a starting point, so to speak, of dealers selling less than 700 cars per year; is that correct?

A. Yes, sir.

Q. How did you come to select that figure?

A. That was the question. The question was asked in that frame of reference.

Q. I take it you didn't make the selection, you were told to study 700 or less.

[fol. 488] A. Yes.

Q. In the course of your study or observations is there any statistical analysis which would make that 700 figure any more significant than using a 600 or 800 figure?

A. We used naturally 300, 400, 500, through 700.

Q. Yes, I understand.

A. We stopped at 700 because the question asked what was the impact on the 700 and below car dealers.

Q. I appreciate that. What I am asking you is did you find on the basis of your studies any particular reason for stopping at 700 as opposed to stopping at 600, 500, or going to 800 or 900?

A. No. We found that generally, though, the smaller the dealership the more the dealer would suffer through volume reductions or price reduction.

Q. Did anyone connected with General Motors tell you why they had selected 700 as the stopping point, or as the starting point, however you want to look at it?

A. No.

Q. You just don't know?

A. Right. Yes.

Q. You just said something to the effect, and check me if I am wrong, that the profitability of the dealer bears a relationship to the volume.

A. Yes. We found it bears a relationship to the volume [fol. 489] and sales price.

Q. But that is not always true, is it, Mr. Dykeman?

A. Very much so. It's a very responsible relationship.

* * * * *

[fol. 490] Mr. Blecher:

Q. Mr. Dykeman, when you captioned this "1960 Chevrolet Dealer Volume" and then there is a subcaption "Number of New Vehicles," those numbers of new vehicle sales, [fol. 491] just so the record is clear, includes new passenger cars and new commercial cars and trucks.

A. Yes, sir.

Q. The fact is that there is no necessary correlation between the number of new cars—and I now use that phrase as you have used it, including trucks—the number of new vehicles, let's call them, sold by a dealer and his profitability, is there?

A. There is a very definite correlation. Gross profit on new and used car sales will vary in proportion to volume.

Q. Maybe my question is not articulate, Mr. Dykeman. The overall profitability of the dealer, as would be reflected, and if you will open any one of these sheets to Page 2, as would be reflected by Line 75, which reflects net profit or loss before bonus and income taxes, that that line reflecting net profit or loss of the dealership before bonuses and income taxes does not bear a necessary relationship, does it, to the volume of new vehicles sold by the dealership?

A. It is a direct result of net sales, for example, which varies in direct proportion to volume, yes. The volume of units sold is very, very influential in determining the net profit or loss.

Q. There is no question about that. Of course it is, Mr. Dykeman. What I am asking you is if there is a necessary relationship between Line 75, the figure thereon, which purports to show the net profit or loss of the dealership

[fol. 492] and the number of units that the dealer sells, number of new units that the dealer sells.

A. Yes, generally the larger the number of units sold the larger will be Line 75.

Q. Let me hand you the financial analysis for Guarantee Chevrolet, and I first invite your attention, Mr. Dykeman, to the document we have marked as Plaintiff's Exhibit 287, which is the array of the dealers, in terms of volume sold. Do you have that before you?

A. Yes.

Q. I invite your attention to Page 2. If you counted up from the bottom my observation would be that Guarantee was fourteenth in terms of total volume of new cars and trucks sold by Chevrolet dealers in the year 1960. That is fourteenth from the top.

A. Yes.

Q. And yet the dealership—

Mr. Rosiello: You say fourteenth from the top in terms of volume?

Mr. Blecher: Fourteenth biggest volume dealer is what I am saying.

Q. And yet that dealership shows a net loss of something over \$10,000 before profit and loss. That certainly would play havoc with any assumption that a large dealership is necessarily a profitable dealership, doesn't it?

[fol. 493] A. That is very true. I didn't say "necessarily," I said "generally." You can find exceptions, very definitely.

Q. Let me show you the financial statement of Cone Chevrolet. In that connection I invite your attention to Page 1 of the array, which reflects that Cone Chevrolet of Fullerton is, according to my account, fifty-second in terms of volume of the 76 Los Angeles area dealers. Fifty-second from the top. And that that dealership, if you will take a look at its total profit before taxes and bonuses, on Line 75, shows a profit of over \$121,000.

A. Yes.

Q. That certainly does not fall into any statistical pattern which shows a necessary relationship between the number of new units sold and the profit of the dealership.

A. Right.

Q. In fact a good number of factors determine the profitability of the dealership as a whole, do they not?

A. Yes, very true.

Q. Among those factors are the profit and loss of the used car department.

A. Yes.

Q. And the profit and loss of the Service and Parts Department?

A. Yes.

[fol. 494] Q. And a very important factor, Mr. Dykeman, is the profit that the dealership makes from financing cars, is it not?

A. Yes.

Q. In fact the other income aspect of the dealership's operation is vital to its profitability, isn't it?

A. Yes. And to clarify the point I made a while ago, you generally find that the larger the number of cars sold the bigger the financial income.

Q. That also depends in large measure on whether or not dealers are capable of financing some of their own cars.

A. Yes.

Q. Then you find that some of the smaller dealers show financing income, as reflected on Line 77 of Page 3, far in excess of the amount that would be normal for a dealership that size, do you not?

A. (No audible response.)

Q. For example, let me point out to you in the case of Kenneth Chevrolet, in Hawthorne, a financing income on its operation, income from financing of over \$147,000 for a dealership that had a total of 1406 cars. That financing income is larger than many of the dealers who sold a great deal more cars than Kenneth, is it not?

A. I would have to compare each one, Mr. Blecher, and I have not.

[fol. 495] Q. That is an important factor in the dealers' profitability?

A. Yes, sir.

Q. And you would find that as a rule that financing income would vary in some relationship, some direct proportion to the number of units sold?

A. Yes, sir.

Q. In determining the question of whether or not a dealer

might elect to go out of business because he reflected no profit, little profit, or indeed a loss on Line 75 of Page 2, isn't one of the factors that you would have to consider in relatively small businesses of this character what the owner would draw from the business?

A. Yes, sir.

Q. And that is an important factor in determining really whether or not the dealer is profitable?

A. Not necessarily so. What is an important factor is how much more by owning a dealership does this man take from the business than a man of equal ability could earn in other pursuits. It could well be that a man of his ability could earn much more than he takes out of the business as an owner. There is no way for me to make that determination.

Q. Precisely that is something that the dealer would have to decide for himself.

A. Yes.

[fol. 496] Q. In other words, he could show no profit, little profit or in fact a loss if he was drawing enough money out of the business in the form of a salary before he would reach any point of deciding whether or not he would close the doors.

A. That would probably have a bearing.

Q. Let me invite your attention, for example, to Hastings Chevrolet, which on Line 75 of Page 2 reflects that the dealership in 1960 showed a loss of slightly over \$9,000.

A. Yes.

Q. Now let me invite your attention to Line 17 on Page 3 which reflects that the owner's salary in that instance was some \$54,000.

A. Yes.

Q. That would certainly be a factor that the fellow that owned Hastings Chevrolet would consider in determining whether or not they were going to close the doors merely because the dealership as an entity happened to be non-profitable.

A. He certainly would consider that as one of the factors, plus what he could get were he not a dealer in ordinary business.

Q. But before he could make any final determination as to whether or not the lack of profitability or relatively small

rate of profitability would affect the decision to close the door you would have to first also consider what he was drawing, if anything, in salary.

[fol. 497] A. Not necessarily. If this dealer felt that his salary were a fair remuneration for the time and effort and investment that he put into his dealership he would consider that merely a fair remuneration for these things and could well base his decision on what the net profit of this dealership indicated.

Q. Of course he could. But on the other hand he could also consider the contrary.

A. He could do as he pleases.

Q. That is he doesn't have to draw any money out of the business on the terms of its profitability as an entity if he draws sufficiently on it in terms of salary, couldn't he, before he would make the decision to close the door?

A. You are asking me to delve into the mind of an owner which I just can't do.

Q. As an accountant you know that is the case in many instances of fairly small businesses, don't you?

A. Yes.

Q. Let me show you the statement for Vista Chevrolet, Mr. Dykeman. This is a dealership that sold a grand total of 328 new cars and trucks in the year 1960, and on that Line 75 of the statement it shows a net profit of \$18,209 before taxes and bonus.

A. Yes, sir.

Q. Let me ask you to look at the financial statement of [fol. 498] Bruder Chevrolet which sold 1362 new cars and trucks, or roughly four times the number, and shows a profit on Line 75, really on 74 but it belongs on Line 75, of \$2,660. In fact you could go through a lot of these such analyses, Mr. Dykeman, and reach the conclusion that the profit of the dealership isn't necessarily connected to and dependent upon the number of cars and trucks that are sold.

Mr. Blecher: Just a moment. Do you have a quarrel with the number?

Mr. Thumann: I am merely having trouble locating Vista Chevrolet. Are you sure it is one of the 76?

Mr. Blecher: It is on your list.

Mr. Thumann: Yes, there it is. I am sorry.

Mr. Blecher: Mr. Leibovitz, would you be kind enough to read the question to the witness.

(The reporter read the pending question.)

The Witness: There certainly are many factors that determine what contributes to net profit of a dealer. My previous answers were directed to one basic statement, which I believe is a statement of fact, that one of these factors, and a very important factor is the volume of cars sold.

As you have pointed out there are many other factors. There is how effectively he controls his expenses, salary that he takes. Certainly there are many factors. But a very important factor that determines profitability of a [fol. 499] dealership is volume.

Mr. Blecher:

Q. Now another important factor, Mr. Dykeman, is the used car operation of the dealer; is that right?

A. Yes.

Q. Again subject to correction by yourself or by counsel, as time may allow, and to expedite this examination I have made a study of this Line 67, which is called "Departmental Profit and Loss of Used Car Departments," of the 76 dealers by volume of new cars and we are using that to mean cars and trucks by volume of new cars sold. And if you make a note of what I say I would like to discuss it with you.

I find that there are 19 dealers who in 1960 sold less than 600 new cars and trucks. And of those 19, and before the allocation of any general administrative expense, Line 67 reflects of departmental profit or loss three of those dealers showed a profit in the Used Car Department and 16 showed a loss.

That there are 36 dealers in the category of six to twelve hundred units, and of those 36 in referring to Line 67 before any allocation of GAO, 18 showed a profit and 18 showed a loss.

And that there are 21 dealers who in 1960 sold over 1200 units, and that of those 16 showed a profit before any allocation and five showed a loss.

The percentage figures break down roughly like this:

In the first category of under 600, 84 per cent of the dealers [fol. 500] were unprofitable, in the middle category it was 50-50, and in the over 1200 category 76 per cent were profitable.

A. All of this is before allocation.

Q. That is correct. And considering that we are talking about these departmental figures before allocation, on this basis and assuming these figures to be accurate, Mr. Dykeman, can you draw any conclusion from those figures that the profitability of a Used Car Department varies in relationship to the volume of new cars sold by a dealer?

A. Yes.

Q. It would appear to be that that would be an acceptable conclusion.

A. Yes.

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[fol. 501] Q. Did you at any time in connection with this mass of information you had available, and which you studied, did you ever look into it—I used the word “study” and maybe you mean something different than I do by that. Did you ever look into the relationship of the fixed expenses [fol. 502] necessary to operate a Used Car Department and its relationship to the profitability picture of that department?

A. Basically not as a separate entity. Our study, as you observe from the Schedules BB and BC combine the new and used car operations as one entity in the study. Certainly just in looking at financial statements we see the amount of fixed expenses that are in the New Car Department and the amount of fixed expenses that are in the Used Car Department. So we are not unaware of fixed expenses being in the Used Car Department. But we didn't study that separately.

Q. Isn't it true on the basis of your observation, Mr. Dykeman, that the small dealership, in terms of selling new cars, generally sells also a number of used cars that bear some relationship to the number of new cars that he sells?

A. Yes, sir.

Q. And that the fixed cost of operation to a dealership selling a small number of used cars is roughly the same

as to the dealer that sells a significantly larger number of used cars?

A. No. The fixed expenses, as one of our charts indicates, stays the same for ranges of volume. And then when there is an increase beyond that range we get what accountants call a stair step up in the level of fixed expenses.

So you answer your question, which is a difficult one. [fol. 503] Yes, for a particular range they stay constant, and then when you go beyond that range you get a step up, an increase in the fixed expenses of the New and Used Car Departments.

Q. That was a study based on the New and Used Car Departments combined?

A. Yes.

Q. I am trying to isolate for the purpose of our discussion here the Used Car Department separately. Isn't it a fact, for example, just picking somewhat arbitrary numbers, that the dealer that sells a thousand used cars has an overhead fairly close to a dealer that might sell three or four hundred used cars per year?

A. I did not make that study. But I would assume that it would be somewhat different.

For example, he would have to pay property taxes on a thousand used cars versus property taxes on 300. He would have to maintain a lot that would hold a thousand cars and this would require a certain size.

These would cause differences in the fixed expenses but we just did not study that phase of it in detail.

Q. We have got these two sheets from Bruder and Vista out. If we compared the one on the left here, I am talking about Vista, and that has a used cars and trucks sale of 471, and the Bruder exhibit has 932. There are almost twice as many but not quite. If we turn to Page 3 and check the column for fixed expense group for the Used Car Department [fol. 504] ment we find in the case of Vista an entry of \$7,135 and for Bruder \$8,011, a difference where Bruder is higher by less than \$900 for nearly twice the volume.

A. Which is 12 per cent, though, different.

Q. Would you find, as you went through these, that the fixed expense necessary to operate a Used Car Department does not bear necessarily a close relationship to the number of units that the dealer sells?

A. That is what we mean by the stair step-up versus a regression line graph. It is affected by size but it is not affected by changes in size at a fixed proportion. That is why again you have a step stair relationship and not a variable line relationship. If it were a variable line relationship you would say that they would be reasonably proportional, and they are not reasonably proportional, but they do change, Mr. Blecher.

Q. And that is why you use the step graph in preparing that study in connection with the fixed expenses for the New and Used Car Department whereas you were able to use a line of regression for all of your other graphs; is that correct?

A. Yes, sir.

Q. Doesn't that indicate to you, Mr. Dykeman, that one of the real difficulties that a small dealership has in making money is because of its relatively high fixed expense in relation to the number of units that it sells?

[fol. 505] A. No. What it does indicate is that he has a poor amount of maneuverability with these fixed expenses. So that he is very directly and vitally affected by changes in volume.

The small ones are at the lowest level of fixed expense. He can't change. So that when his volume goes down his fixed expenses stay constant and it's a fair part of the overall cost. So he gets hurt very quickly by a reduction in volume. That is very definitely so.

Q. Stated another way aren't you saying that the small dealer by reason of his being small has a reduced opportunity to make money right from the beginning?

A. Yes. Because of these fixed expenses.

Q. In your graphs here and in your studies, I am referring now to BF, BG, BH, BI, BJ, BK and BL, your graph is based on the X axis, at least the volume of new cars and trucks sold by a dealership.

A. Yes, sir.

Q. And on the Y axis, or the vertical bar it is based upon the combined gross profits for New and Used Car Departments.

A. Yes, sir.

Q. If I can invite your attention to Exhibit BM, you undertake there, as I read this, to set forth an arithmetic

mean average of gross profit for dealerships reflected by the various lines of regression, except in the case of semi-fixed new and used car expenses which don't follow the line. [fol. 506] A. And the semi-fixed service and parts, and the fixed expenses, yes.

Q. Those remain constant?

A. Yes.

Q. But to the extent that there are variables, and excluding for the moment the semi-fixed new and used car expenses, your numbers are taken off of the line of regression worked out mathematically.

A. Yes, sir.

Q. And you undertake to state separately, so that there is capable of separate computation the profitability of the Parts and Service Departments.

A. Yes, sir.

Q. So that you would take the gross profit in any of these quantity categories and you could deduct from that the semi-fixed service and parts expenses and you could reach some determination, could you not, as to whether or not the parts and service business was profitable?

A. Well, the parts and service operation in addition to just gross profits on parts and service, and semi-fixed expenses on parts and service would bear part of the fixed expense also.

Q. What I am saying here is that you continue from that chart to compute the profitability of the Parts and Service Departments without knowing what portion of the fixed expenses it bears.

[fol. 507] A. Yes, sir.

Q. Now, in no way on this chart, or any of the others that follow it, BN, BO, BP and BQ can you reach any determination about the profitability of the New Car Department as distinguished from the Used Car Department, can you?

A. That's right.

Q. And actually you chose to begin the gross profitability of the New and Used Car Departments, did you not, so as to conceal the fact that the Used Car Departments were as a general proposition very unprofitable for the dealers affected by this study, i.e., those under 700?

A. No, sir. We did it for about the same reason that

you mentioned yourself a while ago, that there is a close relationship between the New Car Department and the Used Car Department.

In most cases when we sell a new car we get a used car back in trade. And because they are so interwound in one operation we combine them as the most realistic portrayal of the situation.

Q. You could have made this study separating out the gross profit on new cars and separately computing the variable expenses, semi-fixed expenses and fixed expenses for that department, could you not?

A. Yes.

Q. And you could have done precisely the same thing for [fol. 508] the Used Car Department.

A. Yes.

Q. And in doing that the fact is, Mr. Dykeman, that it would have reflected on its face by a simple arithmetic computation that the Used Car Departments were always dragging the profitability of the dealership down in this category of less than 700.

A. Yes. As you have percentage figures indicating the greater proportion of the Used Car Departments under 700 were not profitable.

Q. And the effect of merging the two together in the study, as you have made it, is in effect to reduce the point at which a reduction in volume would make a dealer break even, isn't it?

A. Yes. But as you mentioned a while ago we had to consider both sides of one transaction. When a new car is sold a used car in most cases comes into existence.

Q. But you didn't have to consider them integrally. What I am saying is you could have made this study separately.

A. Yes, sir.

Q. If you had made it separately it would have shown on its face that the difficulty in making money of a dealership in this category of less than 700 really was caused in large measure by the lack of profitability in the handling of used cars, would it not?

[fol. 509] A. No, I can't say that because while we have again good proportions of used car operations resulting in a loss your question goes to the magnitude of that loss. And you have to study the magnitude of the loss first to

see whether it would have a minor or a significant impact on the operation of the New Car Department. Merely saying that a number of used car activities resulted in loss is not significant. The significant thing is the magnitude of these losses.

Q. Did you undertake to make that study and see how it would look in relation to the study which you have appended to this affidavit?

A. No. Because we formed a conclusion, and intelligent analysis of a dealer operation. If it were to be intelligent it should combine the two, because the transactions are interwoven, as I mentioned a while ago.

* * * * *

[fol. 510] Q. Now, the fact is that your studies BM through BQ are in substance based on a hypothetical dealer, not one of whom exists in this area.

A. Yes, sir.

Q. And that you could have made this study, as I have suggested, on an individual basis, could you not?

A. I must clarify this. All of these studies are made [fol. 511] on the 76 dealers. The only hypothetical is the selection of the term to characterize these dealers, such as 300, 400, 500.

Q. That is what I meant.

A. These studies are based upon real life situations, the financial statements of 76 dealers. This is what happened to 76 dealers during the year 1960.

Q. There is no doubt about that. But what we have got here in each of these categories that have been selected up through 700 is a grouping of dealers and then a study based on the average of those dealerships, do we not?

A. Yes. Or the mean of them.

Q. And those means or averages do not reflect any single dealership but are a result of combining figures together and then dividing.

A. Yes, sir.

Q. And there is no dealer, so to speak, who fits the pattern as an individual of this 300 fellow that we are talking about in Exhibit BM.

A. Taken as a group they all fit the pattern. To my memory there are five dealers in the 300 group, and each

dealer differs. However, the best representation of those five is our typical dealer.

Q. You don't really mean, Mr. Dykeman, that they all fit that pattern, do you?

A. No.

[fol. 512] Q. Of course they don't.

A. This is the best representation of five dissimilar results.

Q. You mean four, really.

A. Four.

Q. Let us talk about those four fellows that make up this 300 category. You have that array before you and I take it you started with the lowest four fellows on the totem pole, College Chevrolet, Security Chevrolet, Bartons' and Vista.

A. Yes, sir.

Q. Those are the four fellows that made up the study that is reflected by Exhibit BM.

A. Yes, sir.

Q. First of all will you tell me, Mr. Dykeman, why you picked those four?

A. Well, we wanted to characterize a 300, 400, 500, 600 and 700 car dealer, and the best characterization are those dealers selling from 250 to 350, or 349, and 350 to 449 and 450 to 549. We went up in groups of a hundred, accretions of a hundred. The only reason we picked those four dealers is that these four dealers fell into that grouping.

Q. How many systems did you play around with before you picked out this one?

A. None.

Q. You mean this was the basis you selected and the only [fol. 513] study you made on this basis? It was on this basis?

A. Yes.

Q. Just so the record is clear here there was no adjusting of these brackets at any time in making comparable studies to see which one would best reflect this effect of reduction in price on dealerships?

A. No. We wanted to get a well thought out mode of representing this. Now, at times we may have said 200 to 300 rather than 250 to 350. We might have discussed things like that, to my knowledge.

Q. Sure you did. And in fact you did make some kind of sampling or study on the basis of 200 to 300, didn't you?

A. We made some tests like that.

Q. And you made a sampling of 300 to 400 and 400 to 500 and 500 to 600, didn't you?

A. Yes.

Q. And you went all the way up to 800, didn't you?

A. Yes.

Q. And you used these figures because they proved your point better than the other figures by grouping the dealers differently.

A. No, that is not so. To the best of my knowledge that is not a true statement.

Q. Why is it that you didn't use the grouping of 200 to 300?

[fol. 514] A. Again the question came in: What is the impact on 700 cars and below.

We felt that the best way of answering that question was to start from 250 to 350 and to say this is the 300 average, and from 350 to 450 and say this is the 400 average.

If we had gone from 200 to 300 we would have been forced to say this is the 250 average. And we felt it was easier to say that in round numbers, three, four, five, six and seven hundred.

Q. It was solely a question of convenience in determining your choice; is that it?

A. Yes, to the best of my knowledge.

Q. A while back I think I got diverted, Mr. Dykeman. I asked you whether or not it wouldn't have been possible to make this study, i.e. a study showing the effect of reduction in volume or reduction in price by dealers on an individual basis and then compute the sum of the digits. It would have been very easy to do that, wouldn't it?

A. No. Because as we analyze the problem on an individual basis they are so dissimilar. You could select any one individual and come up with a conclusion and disprove it completely by selecting another individual. We felt that the best way to portray a situation was not take individual by individual, but to try and find what decision rules faced all of these people. To work with all of the data because all the data enabled us to form decision rules for all of the 76

[fol. 515] people. And then we merely took the decision rules and applied it to a grouping.

Now, we could have applied it to 200 to 300. We just selected the 250 to 350 and said that was the 300 group.

Q. There isn't any doubt in your mind, Mr. Dykeman, as to what this survey or study is going to be used to show or is designed to show, is it?

A. It is designed to answer a very definite question that was put in front of us: What is the impact of a volume change on dealers in the 700 and below range?

Q. But in the context of this litigation you knew and understood that the thrust of the study was going to be a foundation upon which General Motors would urge that an increased volume of sales through discount houses would necessarily bring about the demise, at least the destruction of profitability of certain dealers. There wasn't any question that was what this was going to be used for at the time you undertook to prepare it, was it?

A. I am not familiar with the general mode of strategy. They haven't discussed this with me. We were asked a specific question.

Q. And you made this study in the abstract without having any notion at all what its thrust was in terms of the issues in this litigation?

[fol. 516] A. Well, it was a study of facts. And when you study facts you just wait and see what the results are. Sometimes the results are favorable to a position, sometimes they aren't.

We, as people who study facts, are not interested in how the facts are going to be used. We have intellectual curiosity, but a factual study is a study of facts. And you use techniques, you use accounting techniques, you use statistical techniques to try to best portray these facts.

Q. Let me ask you this, Mr. Dykeman, would you think it would be fair to say that a reduction of 12 per cent in the volume of cars sold by those dealers comprising the 300 category, as demonstrated by Exhibit BM, would result in the lack of profit to each dealer within that class?

A. No.

Q. Obviously it wouldn't.

A. It would not.

(A short recess was taken.)

Mr. Blecher:

Q. But that is really, Mr. Dykeman, what Exhibit BM is intended to convey, that is convey that impression?

A. No. BM deals with the typical dealer. Again we know that dealers differ and what this study is intending to portray are the major decision rules that the entire 76 are guided by. When you get down to an individual situation, you tend to prove almost any point of view that you wish because of the differences between individual dealers.

[fol. 517] It is almost like the insurance industry who says, "Here is an average man and the average man is a certain age and he is a certain height and he has a certain life expectancy." And the whole industry is based on that.

If you wanted to you could show that some people die early and some people die late. But this average man is the best characterization of the entire populous.

Q. Referring to your array here, which was Exhibit 287, let me hand you the financial statement for the smallest dealer in the area, which was College Chevrolet and invite your attention to Page 2, Line 75, which reflects that in 1960 that dealership showed a net loss of \$96.04. Is that correct?

A. Yes. That shows he would lose money and has lost money without any volume change.

Q. Let me show you the statement for the second smallest dealer, which is Security Chevrolet, and invite your attention to Line 75 Page 2 which shows that that dealership lost an amount of \$26,880.16 in 1960.

A. Yes, sir.

Q. The fact is in respect to both those dealerships no reduction in volume was necessary to reach the break-even point because they were long past it.

A. Yes, sir.

Q. Let me show you the statement for Barton Chevrolet, [fol. 518] who is the third smallest dealer, and his dealership shows a profit on Line 75 of \$4,321.41.

A. Yes, sir.

Q. It is fairly simple to calculate, is it not, that if he lost 12 per cent of his volume of new cars, which would be 273 at the rate of 12 per cent that we are talking about something over 30 cars, at an average gross profit of over \$200 that he would be losing money?

A. Yes. It is also easy to see that our typical dealers make a profit of \$6,002.00, and any dealer below \$6,002.00 would lose money faster than we say and any dealer above \$6,002.00 would not come to the break-even point as fast as this.

Q. Let us take the case of Vista, who is the fourth dealer and last dealer in this category, and Line 75 of their statement shows a profit of \$18,209.14.

A. Yes.

Q. The fact is in making this average of the four dealers comprising the so-called 300 group, Mr. Dykeman, that this last fellow, the inclusion of Vista, markedly alters the whole structure of it, doesn't it?

A. He is part of the average and he has an impact on the mean, the arithmetic mean computation. Yes, every one of the four do.

Q. In this particular case he affects it more than the [fol. 519] other because his profit is so much greater than the other profits or the losses in the case of the first two.

A. Yes.

Q. In fact if you drop Vista out of this category and made a study on dealers who in fact sold less than 300 units it would show that those dealers didn't need any reduction in volume to break even, they had passed that point, wouldn't it?

A. Yes.

Q. And that is one of the reasons you choose this category of 250 to 350 instead of 200 to 300.

A. It is not so.

Q. Didn't you make a study on the basis of 200 to 300, or the average of 250, and submit that to General Motors?

A. We made a number—Yes, we made preliminary studies along that line.

Q. Didn't they tell you to go back and figure it out some other way so we could show that the dealers needed a reduction in volume to drive them to the break-even point?

A. No. Actually that first schedule, as you indicated yourself, would be even more telling on the General Motors position because they could have stated apparently that here are people who are in a very bad position. Here are dealers who are going to be affected immediately by any volume change.

Had we used those three, for example, in the first class instead of coming up with the first volume reduction of [fol. 520] 12 per cent on BB, we would have come up with a volume reduction of maybe 2 per cent or 3 per cent.

Q. Or zero?

A. Or zero. Which would be perhaps more in favor of what General Motors might want.

Q. At least in your view.

A. Yes.

Q. Actually when you take these four fellow that make up the first group, the only one treated as an individual that might be adversely affected to the point of no profit by volume reduction of 12 per cent would be Barton.

A. The others would lose more, Barton would break even before 12 per cent and Vista would not break even, it would have a profit at 12 per cent.

Q. It would still make money at that reduction.

A. At 12 per cent, yes.

Q. Do you know of any facts which would lead you to believe that the lack of profitability of College Chevrolet in any way related to the discount house activity?

A. No. We didn't study that.

Q. Your study doesn't purport to make that determination, does it?

A. No.

Q. And that would be true with respect to these other dealers, wouldn't it?

[fol. 521] A. Right.

Q. Getting back to the question, you could have for each of these dealers in fact computed what was the break-even point for each of them on an individual basis.

A. Yes.

Q. And in the case of College and Security in making such a computation you would have found a break-even point at zero since they were losing money without any volume reduction.

A. Yes, sir.

Q. And you could have found, for example, that Barton would have reached the break-even point before 12 per cent, just using an arbitrary number, that they would have reached it, let's say, at 8 per cent; is that right?

A. Yes.

Q. And you could have found for Security to reach the break-even point it would have taken more than 12 per cent. Let's take an arbitrary figure like 16 per cent. Right.

A. Yes, sir.

Q. And then you could have made a study tabulating all of those, couldn't you?

A. Yes.

Q. Did you make such a study?

A. No, sir.

Q. Do you think that would be more meaningful than this?

[fol. 522] A. It would be less meaningful because our analysis in effect took all of the 76 dealers and we tried to identify uniform powers that react on these 76. If we dealt with each one, each individual would distort the picture and it would make it most difficult to come up with an interpretation based on all.

The arithmetic mean of the computation you are suggesting would have been a number that in my opinion would have not been a very significant number.

Q. I am not suggesting, Mr. Dykeman, an arithmetic mean. But you could have made a computation showing that seven dealers were losing money to begin with and didn't need any volume reduction to drive them to the break-even point. There were three dealers, for example, that needed a volume reduction of 2 per cent, seven dealers that needed a volume reduction of 8 per cent, and so on. Wouldn't that have been a study, along those lines, that would have been a more meaningful portrayal of what actual effect a volume reduction would have had in terms of these real live business entities based on their 1960 sales?

A. No. Because even in that study you would have pulled them all together in order to come up with conclusions. And that is what we did in our study. We used each one of these 76. Each one of these 76 were used in our study and we wanted a number of dealers to be portrayed of the 76 because the more dealers we had the less [fol. 523] the interpretive rule was influenced by non-conforming or out-of-pattern dealers. We had to try to get conforming rules. And our study is a very carefully thought out study to give us conforming patterns among

76 in an environment where on an individual basis you would be coming up with highly conflicting dissimilar results.

And it is because of these conflicting and dissimilar results we feared that you could make any interpretation that you wished merely by picking one group versus another.

We had to get the decision rules that applied to the 76 and find the statistical patterns that applied to the 76.

Q. In making the study of the first four you don't find any of the so-called uniformity, do you?

A. No. Quite dispersed.

Q. You find one dealer that is making a relatively substantial profit, one dealer that is barely making a profit and two dealers that are losing money.

A. Right.

Q. And on the basis of that wide range of disparity, ranging from over \$9,000 loss to a \$18,000 plus profit, you attempt to form a statistical pattern under which you assert that a volume reduction would have certain effects. Now, that doesn't really mean anything, does it?

A. That is not right. We developed these statistical [fol. 524] patterns not from these four. That is the point I am trying to make. The statistical patterns were developed from 73.

Mr. Mitchell: Seventy-three or seventy-six?

The Witness: It was 76 and we excluded three, Mr. Mitchell.

Had we developed statistical patterns from just these four, as you suggest, we could not get a uniform or intelligent interpretation because the next statistical group would be quite dissimilar. So, therefore, we put all of the dealerships together to see what statistical patterns apply to all so that we could say much as the insurance company says, these rules are most characteristic of all 76 dealers, or 73, because we excluded the three.

Our objective in these studies was to develop rules that were the most characteristic of the situation for the entire 73, not for any one or not for any group of four, but for the whole 73.

Mr. Blecher:

Q. But now if you try to apply what you call these rules to this group of four you find it really doesn't mean anything; is that right?

A. It means a great deal.

Q. What would it mean in the case of College Chevrolet that was already losing money?

A. They would lose more.

Q. And what would it mean in the case of Security Chevrolet?

[fol. 525] A. If they had a volume reduction they would lose more.

Q. And what would it mean in the case of Vista?

A. Vista, they would make less.

Q. So all you are proving is that a volume reduction would have an effect on profit.

A. Yes.

Q. That is not very startling, is it, Mr. Dykeman?

A. No. But we are showing the extent of the volume reduction that would bring this group close to the break-even point.

Q. But there isn't any such group, is there? In reality the figures that are portrayed by Exhibit BM don't reflect the actualities of these four businesses that they undertake to reflect.

A. They are the mean of the four.

Q. And of the mean the fact of the matter is that two of the dealers were already losing money.

A. Yes.

Q. And they have the effect of weighting the average in a manner—Let me invert that. The one dealer that is making a substantial profit in this group has the effect of weighting the average to the point where before they reflect a profit why in fact that is not an actual reflection of the actual individual businesses.

A. No. Two made a profit and two lost, yes.

[fols. 526-528] Q. The pattern for the 500 group dealers varies from the others, does it not?

A. Yes, sir.

Q. What caused that, Mr. Dykeman?

A. Essentially the 500 did not conform to the pattern because of the fixed expense. The impact of fixed expense.

If you look at Chart BL you will find that the 500 car dealers are in a good position. They are on the high side of the range of fixed expenses.

Car dealers from 350 to 550 have this same level of fixed expenses. They are in a very fortunate pattern. As they jump up to the 600 car dealership their fixed expenses go up.

But in specifically answering your question they do not conform to the pattern following through because of the impact of fixed expenses on a 500 car dealership.

Q. And the thrust of that is, Mr. Dykeman, that a dealer who sells less than 500 units is in a position where right from the beginning his opportunity to make money is substantially decreased.

A. Because of these fixed expenses.

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[fol. 529] Q. I am talking about the 500 volume fellows.

A. Within this?

Q. Sure.

A. I don't recall. I would assume we would have pluses and minuses around that arithmetic mean, yes.

Q. In fact one of the dealers was losing money and the other four were making money.

A. Yes.

Q. And of course the fellow that was losing money drags the average down.

A. Yes, sir.

Q. And assuming for the moment that he wouldn't have been in business at all in 1960 the other four fellows would require a much higher loss of volume in order to cause them to reach the break-even point.

A. If you excluded the losing dealer, yes.

Q. One-third of the dealership's volume, that is a pretty substantial amount, isn't it, Mr. Dykeman?

A. Yes.

Q. I mean as far as business gone, and based on your [fol. 530] long experience as an accountant, you don't rarely find that type of reduction taking place.

A. Well, that is a general statement and I am sure there are many examples of finding that type of reduction in business, yes.

Q. On the basis of this analysis did you form any opinion as to whether or not the five dealers who comprised this 500 category were likely to each lose one-third of their volume?

A. We did not study that, no, sir.

Q. The 500 group also requires a much higher reduction in selling price before they would reach the break-even point.

A. Assuming a no change in volume, yes, sir.

Q. And of course in computing this break-even point you have not, except treating it as an expense, taken into consideration a judgment factor which the dealer would make, namely whether he would be willing to stay in business simply to draw a substantial salary from the dealership.

A. Yes.

Q. And of course the study at all times assumes all other things remaining equal except to the extent that the study itself reflects a variation in miscellaneous income and in the variable expenses and semi-fixed expenses.

A. Yes. Every expense that is affected by volume this study shows a decrease in those expenses. Any expense that is not affected by volume, that expense remains constant. [fols. 531-534] stant.

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[fol. 535] Q. Let me invite your attention to Line 18, which is "Supervision-Salaries." You found that those bore no relationship to the volume of a dealer?

A. Yes, I am pretty sure we classified those as fixed.

Q. How did you come to that conclusion?

A. Well, on two bases, One is business judgment.

We know on the basis of much experience that supervisory salaries are relatively fixed. They only change for significant changes in volume activity. They are essentially fixed.

And then we also looked at the dealers, and to be specific, we looked at the 31 dealers whom we were investigating [fol. 536] to see if when we increased the volume of cars sold that supervisors' salaries changed. And they didn't to any extent. Actually some were higher for low volume

dealers than they were for high volume dealers. It was a very inconsistent pattern.

Q. What do you consider on the basis of business judgment, Mr. Dykeman, to be a significant change in volume?

A. Oh, anywhere in the area of a 25 per cent change.

Q. To the extent, for example, that Exhibit BO, which talks about a third reduction in volume is predicated upon no change in supervision salaries, where you reached a 30 and 33 per cent level it would be an error not to consider that at least some reduction in supervisory salaries might have taken place at those levels of reduction?

A. To that extent, true. But we also realize that we classified advertising expense as a wholly variable expense. We know that that is not a wholly variable expense. It had major proportions that seemed to be variable.

We know, for example, that advertising expense can really go up if volume goes down. It is within the control of the owner of the company.

But we had to get a businessman's classification of these expenses. And this businessman's classification is reasonably good. It is not exactly accurate.

Q. You say you used the owner's salary but none of those [fols. 537-538] are charged in the New and Used Car Department, are they? They all seemed to be charged to administrative expense.

A. If memory serves, some of them did spread it, Mr. Blecher.

Q. Where they did you treated it as a variable.

A. Yes.

Q. How about other salaries and wages, Line 20, on what basis did you conclude those were wholly fixed?

A. We looked at this expense for each of the 31 dealers to see whether as the number of cars sold this would have any change—any significant change that was related to volume, and we found a completely scattered situation. As I remember no relationship was observable at all.

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[fol. 539] Q. In respect to that portion of your study that undertakes to state the amount of reduction in selling price that would bring about the break-even point, all of the same considerations which we have discussed in connection

with the reduction in volume would be applicable and the studies are identical except, one translates the results in terms of volume, one translates the result in terms of reduction in selling price.

A. No. There is a very important difference between the two studies. A reduction in volume has an impact on all of the expenses, at least those which are variable, and it has a lesser impact on those expenses which are semi-fixed.

A reduction in selling price has an impact just on the retail sales volume of new cars sold and the commission expense. It just has that narrow impact and naturally the net profit figure. It has a much narrower impact.

Q. The result of that would be that the reduction in the selling price as opposed to a reduction in the volume would adversely affect the dealer much more rapidly and [fol. 540] much more adversely.

A. Yes. Because he wouldn't be offsetting expense reductions with it, that's right.

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[fol. 541] Q. How did you happen to choose this method?

A. Well, we investigated a number of methods. We investigated allocation of administrative expenses on a sales [fol. 542] basis, we investigated this allocation on a labor basis and we investigated it on this method of allocating in direct proportion to the allocation already made on the statements.

We felt in analyzing the sales method that this was an inappropriate method because the sale of new and used cars deals with a relatively small number of sales of large magnitude, and the service and parts activities deals with many, many items of small magnitude. Therefore we concluded that if we used the sales method we would have an inaccurate distribution.

We looked at the distribution based on wages and we felt that the reverse was quite true. Here in the Service and Parts Department there was much labor incurred on many, many small items and correspondingly less labor expense in the New and Used Car Department. We felt if we used a labor method it would be unfair in the direction

just the opposite as the unfairness had we used a sales method.

When we analyzed spreading the expenses on the basis of the ratio already spread, or already distributed, we felt that was the fairest.

We spoke to several dealers and asked for their suggestions to see whether they could supplement our knowledge and they couldn't come up with any real contribution beyond that determination that we had come to. In our opinion we felt that this method we did use was the fairest. [fol. 543] Q. Added to the other two, from an accounting standpoint it would have been equally acceptable, wouldn't they?

A. No, sir. It my opinion they are not acceptable because they are completely unfair. One would have been unfair in terms of allocating a big proportion of expenses to the New and Used Car Department, the other method would have been unfair in terms of allocating a big proportion of administrative expenses to the Service and Parts Department. We felt that these were basically unfair in the opposite directions. And we concluded that the method that we selected was the fairest presentation.

Q. Why is it unfair to assume, Mr. Dykeman, that the administrative expenses are incurred in a relationship with sales?

A. Because when you analyze the types of expenses that are involved you realize that they include not only expenses in the New and Used Car Departments but also in the Service and Parts Department.

For example, there is a tremendous amount of clerical work that is applicable to service and parts activity. There is a great deal of inventory record keeping, a great deal of billing. And when you bill for an automobile you have a small proportion of time spent in handling a big volume, that is a big dollar volume, whereas in the service and parts you have a lot of clerical work involved in small amounts, [fol. 544] relatively small amounts of charges to customers. But this is where the work is incurred.

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[fols. 545-551] Q. Actually, Mr. Dykeman, there are a number of different systems that could be used in allocating these expenses and any one of them might be as good as the other.

A. No, sir. There are a number of possibilities but we feel that the one we selected was the most appropriate and the most accurate. The others were inappropriate, in our opinion.

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[fol. 552] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable CHARLES H. CARR, Judge Presiding

No. 62-1208-CC Civil

UNITED STATES OF AMERICA, Plaintiff,

v.

GENERAL MOTORS CORPORATION, et al., Defendants.

Reporters Transcript of Proceedings—June 17, 1964

[fol. 553] **APPEARANCES:**

For the Plaintiff United States of America: Maxwell M. Blecher, Robert C. Weinbaum, Antitrust Division, Department of Justice, 1602 Federal Building, Los Angeles, California.

For the Defendant General Motors Corporation: O'Melveny & Myers. By: Homer I. Mitchell, Henry Thumann, Donald Wessling, 433 South Spring Street, Los Angeles, California and Lawler, Felix & Hall. By: J. Philip Nevins, 603 West Olympic Boulevard, Los Angeles, California and Aloysius F. Power, Robert A. Nitschke, Nicholas J. Rosiello, Robert W. Culver, 3044 West Grand Boulevard, Detroit 2, Michigan.

[fols. 554-555] For the Defendants Losor Chevrolet Dealers Association, Dealers' Service, Inc., and Foothill Chevrolet Dealers Association: Hansen & Dolle. By: Victor R. Hansen, 453 South Spring Street, Los Angeles, California and Glenn S. Roberts, Gary Lovell, 458 South Spring Street, Los Angeles, California.

[fol. 556] COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Wessling: For the record, your Honor, we are objecting to a rather large number of documents, but the objections fall into three fairly discrete categories. The following documents are objected to insofar as they contain hearsay statements regarding prices at which Chevrolets could be purchased through discount houses.

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[fol. 557] Mr. Wessling: 3, 12, 21, 33, 70, 78, 94, 95, 96, 98, 99, 102, 103, 104, 105, and 170.

The following documents marked by the Government as plaintiff's exhibits are objected to insofar as they contain opinions, with no foundation having been shown therefor, regarding prices at which Chevrolets could be purchased through discount houses. These documents are 3, 10, 12, 13, 14, 19, 20, 21, 24, 27, 28, 32, 33, 35 through 38, 40, 43, 44, 45, 48 through 59, inclusive.—

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Mr. Wessling: 62 through 70, inclusive; 74 through 77, inclusive; 86, 90, 94, 95, 97, 101, 102, and 103.

In the third category are documents to which Defendant General Motors objects insofar as they contain purported summaries of prices at which Chevrolets could be purchased through discount houses, which summaries are based on records of discount houses and dealers, and which records the plaintiff has not marked for identification and has not produced in court. Those documents are 10, 12, 13, 14, 20, 21, 27, 28, 32, 35 through 38, inclusive; 40, 43, 44, 45, 48 through 58, inclusive; 62 through 70, inclusive; 74 through 77, inclusive; 86, 90, 94, 95, 97, 102, and 103.

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[fol. 560] Let me tell you what these documents are so you will see clearly what I am talking about. Every document that we are objecting to here now is a communication, either a wire or a letter written and sent by a salesman, a Chevrolet salesman, or a dealer to General Motors

Corporation or the executives of General Motors, asking that something be done about the so-called discount house situation.

The Stipulation of Facts No. 1 contains a table showing the writers of these letters, the dates of the letters and the persons to whom they were sent. There is no dispute between the plaintiff and General Motors as to their having been sent, as to their having been received or as to the fact that each and every one of them asks that something be done about discount houses. There is no such dispute.

If the Government offers them for the purpose of showing that a number of dealers and salesmen asked General Motors to do so, then we have no objection.

[fol. 561] The Court: That would be the only purpose those would be admissible on, not to prove the acts set forth in the letter.

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Mr. Blecher: Your Honor, we offer these documents to show the state of mind of the writer, not only that he asked the assistance of General Motors in stamping out discount houses, but that the matters complained about, the complaints made by his dealers and salesmen to which objection is now being made, is that they were afraid of the price competition that was being offered by the discount houses.

If the folks that wrote these letters, namely, the dealers [fol. 562] and salesmen, were on the firing line on a day-to-day basis they surely had knowledge of the fact that they were losing sales to the discount houses, and the reason why they were losing sales to the discount houses.

It is for that purpose we offer those in evidence, and not to establish the fact that the discount houses were, in fact, selling for less than the dealers.

The Court: Well, then, do you still object, counsel?

Mr. Wessling: Well, I am not sure Mr. Blecher completely takes care of all of the problems.

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[fol. 563] The Court: The next thing is this, that these letters from these salesmen are evidence only of the fact

that they are complaining, that there is an indication, they are indicative of a situation existing, which is inherent in the whole case anyway. I mean there isn't any dispute but what the fact was that they were concerned about it, is there?

Mr. Wessling: No dispute.

The Court: So what else does it prove?

Mr. Wessling: Well, we think nothing else. I am not sure I understood Mr. Blecher so to limit the purpose for which he was offering them.

The Court: Well, did you go beyond that?

Mr. Wessling: Well, if Mr. Blecher is willing to state to your Honor that he does not offer any of these documents to prove, as a fact that Chevrolets could be purchased through discount houses at certain prices, then probably we have no dispute.

But our worry is that these letters contain incompetent declarations by their writers, sometimes hearsay, not only because the writers are not in court, but hearsay because [fol. 564] the writers themselves who are not in court, put in the letters statements made to them by third parties.

The Court: That is obvious, that is obvious.

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[fol. 565] JAMES M. ROCHE, called as a witness on behalf of Defendant General Motors Corporation, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

What is your name, please?

The Witness: James M. Roche, R-o-c-h-e.

The Clerk: Thank you.

[fol. 566] The Court: By the way, I follow the practice of allowing leading questions until you come to crucial matters. I am sure you gentlemen have had ample experience to know when that point arrives, so up to that point you may lead.

Direct Examination.

By Mr. Mitchell:

Q. Where do you reside, Mr. Roche?

A. I reside in Bloomfield Hills, Michigan.

Q. What is your occupation?

A. I am executive vice president of General Motors Corporation.

Q. How long have you held that position?

A. Since September 1, 1962.

Q. So that we will understand in this large corporation where you fit in the organizational structure, will you describe from the top down to where you are, the offices, and the persons who hold those offices?

A. The chief executive officer of General Motors Corporation is Mr. Frederick G. Donner, who is chairman of the board; chief operating officer of General Motors Corporation is Mr. John F. Gordon, who is president.

Under Mr. Gordon there are four executive vice presidents. Mr. L. C. Gode, executive vice president in charge of staff activities of General Motors; Mr. J. A. Goodman, [fols. 567-569] who is executive vice president in charge of the car-truck body and assembly activities; Mr. George Russell, who is executive vice president in charge of finance, and I am the fourth executive vice president and have the responsibility for the Dayton household appliance group, the Electro-Motive Division, the Allison Engine Division, and the other engine divisions, and all General Motors operations outside the United States.

* * * * *

[fol. 570] Q. In addition to being executive vice president of the corporation, do you hold any other offices in General Motors Corporation?

A. Yes, I do. I am also director of General Motors. I am a member of the Executive Committee, the Administration Committee, and all of the policy committees of General Motors.

Q. Now, would you outline your career at General Motors? I am not talking about every office or job you have performed, but generally, starting with when you

[fol. 571] came with General Motors and up until the time that you became executive vice president.

A. I started with General Motors Corporation in the Cadillac Division in Chicago, Illinois, on September 1927, in the Chicago Branch of Cadillac, which was a branch house operation engaged in sale of new cars at retail, used cars, service operation, parts and accessory operation, and generally a dealer type of business.

From there I progressed through various capacities in the selling organization at Cadillac and became general sales manager of Cadillac on June 10, 1950.

I remained in that position until January 1, 1957, at which time I was made general manager of the Cadillac Division and continued—

Q. What does that mean? Does that mean you have charge of the manufacturing as well as the distribution?

* * * * *

A. That means that I had complete responsibility for the operation of the Cadillac Division, starting with the engineering, design, manufacturing, and the distribution, and sales activities.

I remained in that position until June 1, 1960, at which time I was made vice president of General Motors in charge of the distribution staff.

[fol. 572] Q. Now, what does that mean?

A. That means that I had the responsibility for directing the activities, from a merchandising distribution standpoint, of all divisions of the corporation, from the standpoint of formulating policies, procedures, and general approaches to our sales, service, advertising, customer relations activities.

Q. And that started when?

A. That started June 1, 1960. And I continued in that capacity until I was given my present assignment on September 1, 1961.

* * * * *

[fol. 573] By Mr. Mitchell:

Q. Now, I would like to have you address yourself now to a description of the Chevrolet merchandising plan in the Los Angeles metropolitan area, and why General Motors and Chevrolet have such a plan. And I think the—perhaps the best way to start with it is to have you tell the court what kind of a product you had in relation to this merchandising problem.

A. The Chevrolet merchandising plan, together with our merchandising plan with all of other car divisions, both here and abroad—

Q. May I interrupt there?

A. Yes.

Q. They are really the same?

A. They are exactly the same. Because it is based upon what we call the franchise system of distribution through authorized dealers.

In the automobile business we are dealing with a very expensive product, actually in most cases it perhaps is, next to the home, the largest expenditure that the average person ever makes. It represents therefor a substantial investment, and an important part of the assets of that individual.

Beyond this there is, of course, the fact that it is mobile, and it has to be kept in good operating condition to serve [fol. 574] the purpose for which the individual has purchased the vehicle.

The automobile, because of its size and because of its cost, is a commodity which could not be produced reasonably, or within the means of the average mass buyer, were it necessary to build them in limited numbers, and were it necessary to attempt to build them in one location and store them for indefinite periods.

So we, going back into the early days of the industry, adopted what has become known as the franchise system of distribution to accomplish two important objectives—

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The Witness: First, to provide us, as manufacturers, with a steady, dependable outlet for our product.

And unless we had that type of outlet, it would be im-

possible for us to carry on our manufacturing operations.

The second very important consideration has to do with the availability of sales and service facilities required to serve the owners, the users of these vehicles in the manner in which they expect to be served, and to assure the service, the skills of the parts and so forth that are required to maintain those cars in operation.

The franchise system goes back to the very beginning of the industry. And based upon my experience in the business, dating back to 1927, plus what I know from the history of the activity, we believe that, and it is my firm conviction—as it is my associates' in General Motors—that the franchise system, the three-part relationship between the manufacturer, the authorized dealer and the customer, is the most efficient and the most logical way to handle the product.

[fol. 576-577] We feel beyond this it has played a very important part in the growth and development of not only the automobile industry but the general economy of the country as well.

The Court: May I ask a question?

When was the beginning of the franchise idea, do you remember?

You have learned it, I am sure, since you have been in the business.

The Witness: Yes, sir, your Honor, I can speak from two instances that I know of of my own personal experience. I know of two individuals and companies who had franchises going back to 1905. The first agreement was in 1905.

The Court: What were they, by the way?

The Witness: They were Cadillac dealers. One was in New Haven, Connecticut, and the other one was in Bay City, Michigan.

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[fol. 578] By Mr. Mitchell:

Q. You speak about the need for service and parts availability because of the nature of the automobile.

Does this need have any relationship to sales?

A. It has a very definite relationship to sales because

unless our customers are going to be happy with their products, I don't think we could expect to retain them as customers.

An automobile, of course, is a mechanical product and as much as we try to build in them maximum reliability and quality, being mechanical products they do require from time to time adjustments and repairs that come from age and use.

So unless we had the facilities to provide repair parts, skilled people that were necessary to service those cars, we just couldn't expect our customers to come back and buy from us again.

Of course, in dealing with automobiles, we are dealing with a product that is perishable over a period of years. The average person who buys a new car will purchase a car perhaps every three and a half years, on the average. So that means we have a very important stake in the continued patronage of everybody who buys one of our cars or to whom we can sell one of our cars for the first time.

Assuming that that individual is happy with the product [fol. 579] and assuming, based on the average for the industry, that that individual is going to follow the pattern and buy new cars periodically, if he has received satisfaction our experience is he comes back and buys another Chevrolet or other General Motors product, so much so, in fact, in the average throughout our corporation approximately 70 per cent of our business today is from repeat customers.

Q Does this provision of service and parts availability have anything to do with repeat customers?

A. It has a great deal to do with repeat customers.

The Court: As well as non-repeat.

The Witness: As well as non-repeat, that is right.

We feel, your Honor, that it has so much to do with the non-repeat customers, as well as the repeat customers, that we operate in the United States in strategic locations across the country 30 different training centers, which are used for the purpose of training dealer personnel in service, in parts, and in new and used car merchandising.

At these training centers they conduct regular classes

whereby dealers in the area can send in their mechanics for training and the latest methods in servicing our particular product.

This year we are starting—we are holding and had in Los Angeles just last week the tenth anniversary of our training center which is located in this area. I think that [fol. 580] is indicative of our interest in our customers, as well as the importance that we attach to having these service facilities and these skills available to serve our customers.

Q Does the increasing complexity of the motor car, with the automatic shift and the power brakes and fancy springs, does that have any place in this training program?

A. It has a very great place in the training program. Going back over the years, the addition of automatic devices and accessories, optional equipment in the automobile business has been tremendous.

In the early days, comparatively speaking, going back into the late '20's, early '30's, the automobile was, as compared to today, a very simple device.

However, with the improvements that have been made, the improvements in the engines, with the addition of cylinders to the engines, multiple cylinders, and the addition of automatic transmissions, power steering, power brakes, air conditioning, automatic window lifts, automatic vents, has greatly—

The Court: Don't overlook automatic chokes.

The Witness: And automatic chokes, yes. —automatic chokes, have greatly increased the complexity and the need for different skills, the need for highly specialized craftsmen, service employees in our dealerships, who are capable of coping with the problems that can arise in [fol. 581] the use of these various devices.

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[fols. 582-583] By Mr. Mitchell:

Q. Speaking about the 30 service centers that you maintain about the country for the training of dealers' service personnel, what kind of magnitude of investment do you have in those centers? What does it amount to?

A. We have a very substantial investment in these

centers. I can't give you the exact figures at the moment, but the last time that I had anything to do with it, which was about a year ago, we had over thirty million dollars invested in them.

Q. What type of buildings are these, garages, or what are they?

A. No, they are specially designed buildings that follow a uniform pattern. Each one of our car divisions has its own class room in the training center. There is also an auditorium and conference room. And, of course, some service area in which is installed specialized equipment, such as would be used by General Motors dealers.

The mechanics from the general dealerships come in and attend classes in the class rooms. And then they would go out into the other areas and experiment and practice and be trained in the use of the specialized equipment and tools required to service our product.

[fol. 584] Q. Does the complexity of this automobile have any impact on the dealer's need for tools, expensive tools—I don't mean just monkey wrenches.

A. Yes. The complexity of our vehicles today has a great deal of effect on special tools that are required to provide adequate service. So much so, in fact, that with the introduction of new models each year where there are substantial changes in any of the mechanical components, special tools are designed to facilitate the servicing of these changes, so that the change can be accomplished at a minimum of time, and of course a minimum cost to the customer, as well.

This complement of tools is then made available to all [fol. 585] of our dealers. And in most cases these dealers would purchase these tools so as to have them available even before they receive any of the new models.

The Court: What generally would you say the average agency in Los Angeles, in this area—let's take one about in the medium line. How much in tools would you say,

just as an estimate, they would have to have invested at any one time?

The Witness: It depends, of course, a little bit, your Honor, on how you would define tools. But taking a broad—

The Court: I am speaking now of tools, everything from balancing wheels, automatic equipment to weight, jacks, hydraulic equipment, everything.

The Witness: I would say that on an average in an average dealer in the Los Angeles metropolitan area, he would have approximately twenty to twenty-five thousand dollars invested in what you could call specialized tools.

The Court: All right.

By Mr. Mitchell:

Q. Now, in connection with the nature of the auto- [fol. 586] mobile as a mobile product, what would you say about the need for General Motors providing somehow a means of the customer getting service and parts, not only close to home, but on a national basis?

A. Well, of course, the availability of service and parts on a national basis is a very important part of our overall system, because our people do travel, our customers do travel. And unless we had a network of service stations that is available to service them in cases of emergency, they could be in very serious difficulty.

So our service stations, our dealer service station departments have actually that important responsibility, as well as the responsibility for keeping these cars in safe operating condition.

As I mentioned earlier, we are dealing with a mobile product. The safe operation of that product is important to the individual who owns it, and of course, because he is responsible for it.

But beyond that, it also has a great responsibility to the community at large, because many people, in the course and operation of that product, are going to be exposed to it, in the safe operation of that product; as well as the safe mechanical operation of it is, of course, of paramount importance.

And we, of course, have to look to our authorized [fol. 587] dealers to provide that kind of service.

Q. Dealing further with the nature of the product that you are selling, is there a problem on the automobile about year-around selling? I would like to have you develop that a little bit for the court, and why there is a problem, and what its relationship is to the need for a stable dealership organization.

A. Well, there are very important problems with respect to year-around selling, because we have at Chevrolet, and General Motors as well as others in the automobile industry, a large number of employees.

[fol. 588] We also depend to a great extent on our suppliers to, in turn, have large numbers of employees, and these employees expect to work on as close to a full-time basis around the calendar months every year as is possible.

So we have to have an outlet for our products. We have to have a system which will provide for an orderly flow of our products from our plant to our dealer organizations on a basis where they can be sold, be accepted first and then sold over the full period of the year. This is most important. We spend a great deal of time on this particular subject, because like many other businesses we are subject to certain seasonal fluctuations. We have to try to coordinate our activities so as to maintain an even flow of employment, an even flow of our products and keep our vehicles on the basis where they will be sold each month of the year.

Q. Well, you have of course, annual model changes on each of these lines of vehicles?

A. That is right. The automobile industry is geared to an annual model change. In each one of these changes of product we attempt to improve the reliability, performance and the dependability, the value of our products.

Q. Does that result in any peaks and valleys that you have to rely upon the authorized dealer to see you through?

[fol. 589] A. Well, very definitely. Of course, we rely upon the authorized dealer to sell our products that we produce, because, with the exception of the United States

Government on a very limited basis, we sell all of our products to our franchise dealers. We have no other source of outlet for those products.

We do have seasonal peaks and valleys. Our objective, of course, is to build cars over a period of months which will fill those peaks and valleys and level off as much as is possible the employment and our production programs in our plants so we meet the demand in the field as it occurs.

Here, of course, is where a franchise dealer plays a very important part because, for example, in the winter months in most sections of the United States—you don't have that problem out here in California, but back East we have the very real problem of severe winter weather and we have to keep operating and do keep operating during those periods. But we have our established dealer organizations who accept and inventories and stores these cars in anticipation of the so-called spring peak which will eventually develop.

So our franchise system of distribution gives us that protection, gives the customer, our customers that protection, in having these cars available when they need them. [fol. 590] Beyond that we have certain seasons of the year that are affected by different circumstances. For example, the period around announcement day when the car is brand-new and it is fresh and newly styled perhaps and incorporates many improvements, then cars relatively are in greater demand in relation to the supply at that time of the year than they would be as we approach the closing months of production, in anticipation of a model change-over to start production of the new model.

Generally that period starts along in the first part of July. We finish production maybe up to the first, the middle of July, looking forward to starting our new model production.

This is what we call the cleanup period in the industry and, of course, the general public is pretty sophisticated, they know new models are coming and items appear in the press on occasion which purport to describe the new models in quite some detail. So, of course, it becomes a relatively tougher job to go out and sell cars, say for the

months of June, July, August and September, than it would be at new model time.

All of these things have to be comprehended and have to be included in whatever kind of merchandising program will do the job.

[fol. 591] Q. Well, how does the franchise dealer help see you through this valley of July, August and September?

A. Well, again he is our sole source of—he is our sole customer and he takes the products the we build. He takes the products on the build-out, as we call it, the last few months perhaps of our production, on the same basis that he takes them during the earlier months of production.

Then with his sales force, with the sales facilities that he has, the merchandising organization that he has, he goes out and merchandises and sells these cars, all of them, hopefully, or at least most of them before the official announcement date of the new model.

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The Court: I take it it is the same as in any business where you have a permanent salesman who has had experience and a long list of customers, he gives assistance in calling up those old customers and trying to make trades, which is a valuable service, isn't it?

The Witness: It is a very invaluable service, your Honor, and that is exactly what our dealers have. They do have a sales force, and in most dealerships—certainly, in all of the larger ones—they have the sales managers and skilled sales management direction, and these sales-[fol. 592] men are working at all times to try to sell Chevrolet products.

But their job becomes increasingly important the more difficult the sales job is. A difficult sales job could be caused by model change, pending model change. It could be caused by economic conditions. In our business we attract customers from—in two different ways, primarily. We spend a great deal of money advertising and promoting our products, both on a national basis and at the local level in the dealerships.

We expect that as a result of this advertising and promotional activities we will attract a certain floor traffic, as we call it, a certain flow of interested people who will be inspired by the advertising to come in and look at the product, and expose themselves to some selling effort on the part of the dealer.

We get many prospects this way, but by no means all of them, and the balance of the customers that we need have to be developed by salesmen who, in effect, go out and ring doorbells, as we say, and make contacts on customers, write letters, make telephone calls, do all the other things that a salesman of any product would do to attempt to generate business.

The Court: When you change over to a new model, what, if any, benefits do you get out of an agency as to mistakes? I take it you do make mistakes when you change [fol. 593] over sometimes?

The Witness: You are talking about mechanical mistakes, your Honor?

The Court: Any kind of mistakes. You put out a new model, like a few years ago you gave us the air support, do you remember that?

The Witness: Yes, sir.

The Court: Or would you rather forget it?

The Witness: I would rather forget it. But I remember it very well.

The Court: Such as that.

The Witness: I think, your Honor, first of all, we do attempt to rectify whatever mistakes we make.

The Court: I understand. What I am talking about is what is the relationship of the agency in assisting in bringing about a riveting of that situation?

The Witness: It is a very important step in our system because the agency is the—the dealership is the first person to know about these mistakes.

A particular product or part can fail in the hands of the customer. The logical place for him to take that failure is back to the dealer from who he bought it and that is, your Honor what he does.

The Court: Where you have, for example, a problem such as I mentioned a while ago that becomes sort of a

[fol. 594] wholesale problem, that comes in from all over the country, doesn't it?

The Witness: That is right. We get reports from all our dealers across the country on a problem such as that, generally.

That particular problem you described was, of course, a universal one. Occasionally, however, we will have other problems which will be specialized or confined maybe to certain areas.

For example, the Rocky Mountain area where we may have altitude problems with an engine or carburetion. Or we may have, in the extreme northern parts of the country we may have carburetor icing or something that has to do only with very severe winter conditions.

But whatever those problems are our dealers notify us and, of course, we immediately move in and try to correct them.

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[fol. 595] By Mr. Mitchell:

Q. Tell me what about this motor vehicle creates a problem in respect of satisfying public fancy on these changes which the franchise dealer helps you solve?

A. Well, I think that it is quite obvious that we strive to win the public endorsement, or fancy, as you say, for all of our products.

So all of our activities, in connection with the operation of our business, and especially the annual model change, are designed to try to give the customer what we think they like to have in our products, performance-wise, appearance-wise, comfort-wise, dependability, and so on.

And in this area we depend a great deal upon our franchise dealers to counsel with us, and to give us the benefit of their firing line experience as to what the customers want.

[fol. 596] And so we work very closely with our dealers through meetings, counseling meetings, zone meetings and division and even at a corporation level, with all our dealers in an attempt to explore and identify what the customer wants, and then what we, as manufacturers, can do with our products, designing them that way.

The liaison between the dealer and ourselves is most important in this regard.

Q. Well, suppose you get out a problem model, or you have a problem. You mentioned to me the problem created some years ago by the change in design, or type of cars made by Buick, Olds and Pontiac. And what I would like to have you do is tell the court what part your franchise dealer plays in seeing you through the bad times of a model change.

A. Well, the problem to which you refer was primarily a problem created by a shift in the market, I think. As you will recall, back in 1957—perhaps the latter part of 1956, certainly in 1957—there was a rather decided change in the type of cars which were being sold. That was the advent of the so-called invasion of imports, looking towards the smaller car. And these cars were being brought into the country for almost the first time in any quantity.

Our Buick, Olds and Pontiac Divisions at that time [fol. 597] were operating on what we called a medium price market. That market was the most heavily affected by the smaller cars, with the result that the volume of business in that market—and because these three divisions, Buick, Olds and Pontiac, were operating almost exclusively in this price area—their business was very drastically affected, and their production of sales fell off very severely.

This, of course, presented some very serious problems for us, from the standpoint of operating these three different important divisions.

It represented some very important problems for the dealers, because if our contribution fell off, their business did, too.

And it also presented some very important problems for the owner of these products, and we had millions of owners of these cars in the field. And unless something could be done that would stabilize that condition, these owners' investments could have been very adversely affected.

In times such as this there is certainly no substitute for a loyal, dependable franchise dealer organization. And

thank goodness that is what we had in these three divisions.

We knew what the problems were. They knew what the problems were. We knew that we enjoyed their confidence. We knew that we enjoyed their loyalty. And they in turn respected our judgment and our ability and what we—what they thought we were going to do to attempt to put the business back on an even keel.

As the result, and with their cooperation we were able to come through that period with these three very fine divisions.

We had to make a very important product realignment to meet the new competitive situation in these markets, which we did.

In the automobile business you can't turn around overnight, and we couldn't. And neither could our competitors in that period of time.

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[fol. 601] Q. Did you ever try the system of letting dealers appoint subdealers or, expressing it differently, to sell to the distributors and let the distributors appoint dealers?

A. Yes, we have tried that. In the early days of the [fol. 602] automobile industry, going back now to the very earliest days, the distributor system of distribution was the common method used by us and by all other manufacturers.

That was a system whereby a distributor, so-called, would take the franchise agreement, for a state, for example, and he would assume the responsibility for distributing these products within his state.

Then it would be his responsibility to appoint the dealers in whatever areas in the state he felt they could be advantageously employed to help him in this job. In that capacity then, of course, the contractual relationship was between the dealer and the distributor, in the case of their relationship, and, of course, between the distributor and the manufacturer, in their relationship with us.

That system persisted for a number of years, but as the

automobile business grew the industry became more complicated. We encountered new and different distribution systems. It became quite obvious that we could not have a middle man, so to speak, in between a large number of our outlets and ourselves as a manufacturer.

So as a result of that, over a period of years, distributor systems of distribution were gradually changed over.

The distributors who both sold at retail and distributed to other sellers were eliminated as such and they continued, in virtually all cases, selling cars at retail and performing the ordinary functions of a dealership. But the distributor system gave way to what we call today in General Motors a zone office, that type of distribution.

By that system we mean that the franchise relationship, the selling agreement will be directly between us, as a manufacturer, and each individual dealer. All of our divisions in General Motors at the present present time are on this system, with the exception of Cadillac which is on a part distributor and part zone office system.

The Cadillac distributorship, to my knowledge, is the last one in the industry and will cease to function as a distributor on October 31st, 1965, at which time Cadillac will have accomplished a complete change-over to a zone system of distribution.

We regard this personal relationship with each dealer so important that we think that the zone system is the only basis on which we can operate in today's modern market.

Q. What do you mean by "zone system," Mr. Roche?

A. A zone system means we will set up a zone office in a community such as Los Angeles or San Francisco or Kansas City, which will be staffed by corporation employees, who will have the responsibility for working with [fol. 604] enfranchised dealers in these areas in the distribution of Chevrolets, in the case of Chevrolet passenger cars, trucks and parts and accessories, as well as working with the dealers on merchandising problems in connection with these activities, and also to provide service and parts facilities as required to work with the dealers, to assure the availability of the parts and service activities

needed to take care of our owners in the particular community.

Q. So that the court will see your corporate or divisional structure—we will take Chevrolet—you will have a general sales manager of Chevrolet, who at this time in 1960 was Mr. Kenneth E. Staley, right?

A. That is right.

Q. And then you have two assistant sales managers of Chevrolet, or did, one for the East and one for the West, and to identify the man in relation to this problem we have here, the assistant general sales manager of Chevrolet at the time here in question was Lewell N. Mays.

A. That is correct.

Q. Then you have a regional sales manager, who at the time of this problem, was Roy Cash.

A. That is correct.

Q. His headquarters in Oakland.

A. In Oakland.

Q. Then you had a zone manager in Los Angeles, who [fol. 605] at this time was Mr. Robert M. O'Connor.

A. That is correct.

Q. And then under the zone manager, he would have district managers, right?

A. City managers, district managers, service managers, business managers, sales promotion managers.

Q. All of these are Chevrolet employees?

A. Yes, they are all Chevrolet employees.

Q. And they work directly with these franchise dealers?

A. They have no other responsibilities than to work with the franchise dealers in the zone to which they are attached.

Q. To maximize the sale of Chevrolets?

A. To sell all the Chevrolet cars and vehicles we can and sell all the Chevrolet parts and accessories and to take the best possible care of Chevrolet owners. That is the function of a zone office.

Q. Do you have an owner relation program in Chevrolet?

A. We have a very extensive owner relation program in Chevrolet and in the other divisions of General Motors Corporation. We feel very strongly on the subject of owner relations.

Q. The purpose of which is to do what?

A. The purpose of which is to insure the highest [fol. 606] degree or owner satisfaction that it is possible to achieve.

Our owner relations activity is one to which we have given a great deal of attention. We have a separate organization in each of our divisions who have the sole responsibility of handling this important problem.

These people go out into the field and work with our zone people, work with our dealers in an attempt to improve the efficiency with which we can carry on this activity.

[fol. 607] By Mr. Mitchell:

Q. You are dependent on your dealers to contact the public in respect to this owner relation?

A. Yes, we do. But we go even beyond that, because as a part of our owner relation activity, for example, we go out in the field regularly and select owners at random and invite them in to sort of a roundtable luncheon discussion. And in fact ask them to criticize the service, the product, the treatment that they may be receiving in connection with their ownership of, we will say, Chevrolet cars.

In other words, we encourage them to take their hair down and tell us what is on their minds, with the viewpoint that if we can find out, determine what we are doing that isn't right, then we, together with the dealers, can bring about the resolution of the problems.

Q. Now, there is one other thing that I haven't asked you about, and I would like to describe—have you describe this at a later time. But the nature of the product also brings about a need for a level flow of manufacturing?

A. Very definitely.

Q. And—

A. That is really of great importance.

Q. And does the franchise dealer aid you in making [fol. 608] possible this level flow?

A. We could not accomplish the level flow without the franchise dealers' participation.

Q. Yes. Well, I would like to have you deal with that a little later.

Now, because of these problems arising out of the nature of the product, and your dependence on the franchise dealers, do you feel—or is it your judgment—that you need a stable dealer organization?

A. Very definitely. We need a stable dealer organization because the success of General Motors, the success of our activity depends to a great extent on the stability of our organization, as well as the continuity of our dealer organizations.

And unless we had both stability and continuity we would be in very serious difficulty. And not only is this true in my opinion—if I may express it, but I think that the general economy of the country as well.

Q. Why don't you just sell to anybody that wants to retail your cars? I suppose a person that makes common pins will sell to anybody that wants to resell them. Why don't you just sell your cars to anybody that wants to resell them?

A. Well, No. 1, we are dealing, as mentioned before, with a very expensive product. And everybody could not [fol. 609] afford to invest in the inventory required to merchandise cars such as ours.

But the most important reason, in my opinion, is that these cars are just not like groceries, for example, or articles of clothing, or many of the other things commonly merchandised that way, where they are sold generally through a large number of operations.

We depend upon an organization who is going to help us in determining the market conditions under economic conditions that exist in their areas, to help us in planning our production schedule.

We feel that we have to have an organization that will assume some responsibility in connection with the sale of these products, which will enhance the reputation of the products, as well as the individual business, and a group of people who are going to be with us through thick and thin.

So that if we have what we call in our business a hot model, or a medium model, or perhaps a model that would not be acceptable to the—

The Court: May I ask a question? How much information do you, generally speaking, obtain from your dealers

when you start to plan your new program, your new models? Do you use them in any way?

The Witness: We use them, your Honor, to check [fols. 610-614] their opinions, as reflected by the customers with whom they are dealing as to what they would like to have in our products.

The Court: How about as an estimate of the number of cars you are going to manufacture? Do the dealers in anyway supply you any information in that regard?

The Witness: Yes, your Honor, they do. They supply us with a forecast of requirements, as we call it. They provide us with a forecast of requirements for the current, and the next three ensuing months.

That is one factor that we use in determining our production schedule, an important one—

The Court: I take it then that material is then assembled and completed?

The Witness: That is correct.

The Court: Worked out on a mathematical basis to help determine what the prospects would be for the new year?

The Witness: Yes, that's right.

We—this information was provided on a monthly basis with—from each dealer to the zone office. The zone office consolidates the estimates of all dealers and forwards it to the central office in Detroit, the central division office.

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[fol. 615] By Mr. Mitchell:

Q. Before the luncheon recess, Mr. Roche, we had spent some time dealing with what kind of product the corporation is selling and what the—why that kind of a product needs in its merchandising a stable dealership organization, and you recited various reasons.

I would like you to tell the court how you go about providing for this desired stable dealer organization and for services and parts facilities that enable you, as you described this morning, to further the goodwill of the product.

A. Well, first, the objectives of General Motors and the Chevrolet Division, as with any other company, is to sell as many of our products as we can. So our distribu-

tion system, the plan under which we operate, is designed to accommodate that very important objective.

[fol. 616] That, of course, entails many different things. Obviously, again if we are going to sell the maximum number of products we have to be sure that we are in a position to give good service to our customers.

In the automotive field, dealing with mobile products as we do, the work of a sales organization, No. 1, is to create the owner population which will give us that volume, and then, secondly, to have a service organization which will be capable of servicing the needs of our owners to keep those products operative, which are, of course, questions of paramount importance.

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[fol. 617] Q. I would like you to explain that in detail so the court will clearly understand what you have told me so many times.

A. The appointment of dealers starts with the cities [fol. 618] and the towns across the country, where we have only a single dealer in a town or a community. Obviously, it is not very much of a problem. We either have potential to support a dealer in that area or we can dual with another line and provide the service and the sale outlets that we need.

Q. What do you mean "dual with another line"?

A. Another General Motors line, or maybe Chevrolet and Pontiac would be sold together, or Chevrolet and Cadillac, as the case might be, in a particular town.

Q. And what do you mean by the potential to support a dealer?

A. The potential, gross profit which would result from the sale of the cars and the parts and accessories and the service, that would go with the dealership, and which would leave the dealer, as the owner of the business, a margin of profit sufficient to justify investment of his capital, his time and his ability in the enterprise.

Q. What do you care if he has a potential or not and make a profit or not?

A. Well, if he can't make—if there is no hope for making a profit we cannot attract the type of merchants that we seek, No. 1.

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And, secondly, even if we could attract people who would go into the enterprises, if there were not a profit [fol. 619] potential and they should lose money or not make a sufficient return, they wouldn't stay with us very long, with the result that we would not have a continuity of operation and association that we feel is essential to the successful conduct of our business.

Q. Now, you were telling me that starting in the smaller towns where there was need for one dealer there is a profit potential that would enable only one dealer to survive there, and I interrupted you. I would like you to go on.

A. Fine. The problem becomes quite different when we move into a metropolitan area where more than one dealer is required to satisfy the sales and service requirements of our business.

But again the problem is similar in the respect that we still have to have a reasonable business opportunity, a reasonable potential for a profit, the profit incentive, or whatever you want to call it, to justify the interest of the person who is going to be a dealer.

For that reason it is our practice to make very careful studies of metropolitan areas or those—of markets, for that matter, but more importantly in the metropolitan areas, to make certain that when we do set up a dealership we do so with these two very important objectives in mind.

One is to provide the sales and service facilities that [fol. 620] we need, and, secondly, to provide a profit opportunity for the individual that we want to be the dealer. We endeavor to recruit dealers who will be men of experience, men of integrity, men who will be capable and men who can go in and sell our products on such a basis as will make for continual sales, increasing sales, and who will work with the customers in the area to insure them the proper service and attention that they need so they will receive maximum satisfaction from the use of our products.

Q. Now, when you speak of proper service or the service they need, do you pay any attention to the geographical location of this dealer in respect to the location of his customers?

A. We pay a great deal of attention to the geographical location of the dealership, because we have to determine that in the geographical location area of responsibility, as it is defined in our selling agreement, will provide the profit incentive, the hope of a profit return to justify the interest of the individual who is going to operate the dealership, own the dealership and operate it, as well as to place this dealer in a location where he will be exposed to a reasonable section of the market and where he will be conveniently located from the standpoint of being able to serve the customers in that particular area.

[fol. 621] The Witness: The area, the location problem is one with which we are continually working. That is a most important part of our over-all distribution system.

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[fol. 622] Q. Now, Mr. Roche, let me show you Defendant General Motors' Exhibit A, which is a map showing in blue the locations of the Chevrolet dealers.

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Q. And for the most part, I notice that the blue dots, which are for the Chevrolet dealers, are spaced.

A. They are spaced pretty generally throughout the metropolitan area.

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[fol. 623] Q. Is that by accident, or haphazard, that they are so spaced?

A. No, sir. That is purely by design, and very intentional to place these dealers in the location where in our experience the market potential indicates that they are needed to sell Chevrolet cars, vehicles and service.

The Court: The—I don't see the legend here, the red marks are what?

Mr. Mitchell: They are the discount houses.

The Court: And the blue marks are the Chevrolet dealers?

Mr. Mitchell: Yes, sir.

Q. Why don't you just, while you are locating Chevrolet dealers, if you have a fellow that you think has the integrity and the capacity to sell, why don't you just put him down the street from another dealer? What do you care where they are spaced?

A. Well, we care a great deal about where they are spaced, because when we get back to the necessity for maintaining stability of a dealer operation, continuity of a dealer operation, if we placed all the dealers together, if we put them all in a couple of blocks on the same street, for example, we would not be accomplishing our objective [fols. 624-626] of serving our customers, No. 1.

And then we would be defeating the objective of having the proper service location for giving to our customers the service they require, No. 2.

And, thirdly, it would result in such a dilution of the available business for these particular dealers who would be spaced so closely together that it would be virtually impossible for both of them—or whatever number might be involved—to make a return that would keep them in the business.

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[fol. 627] Q. What kind of an investment are dealers expected to make in this Los Angeles metropolitan area, in return for this sort of a potential to make a profit?

A. Well—

Q. Or put it another way, what kind of investment do you expect from them?

A. The amount of investment that will be made by a dealer in this area will, of course, depend primarily on the planning potential of this particular dealership.

I would say that the—that taking the Los Angeles metropolitan area as a whole, that the minimum investment would probably be somewhere around \$100,000.00, and it would range from that amount up to perhaps several millions of dollars, in order to accommodate the type of business that the individual was operating, and in order to meet the capital requirements which are very carefully spelled out before anybody is awarded a Chevrolet franchise, [fols. 628-629] to meet the capital requirements in our selling agreement.

So it would vary in individual cases. But it would vary in individual cases based on the size of the deal.

But the basic principles which would underlie the amount of capital required would be determined on exactly the same basis, or whatever the size of the franchise might be.

The Court: May I just inquire, what generally is the capital used for? Is that for building, equipment, tools, real estate?

The Witness: Your Honor, the capital requirements, as spelled out by us in establishing a dealership would be primarily the operating capital, the cash requirement that would be required to manage the business, the investment that he would be expected to have in receivables, the inventories of new and used cars and parts and accessories, and so on, the tools, the furniture, the fixtures, the office equipment and so forth, service trucks, things like that.

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[fol. 630] By Mr. Mitchell:

Q. How do you measure the amount of working capital required?

A. We measure the amount of working capital required on the basis of the cash requirements, which ordinarily are determined on the basis of, say, one month's operating expenses.

We would measure the receivables requirement on the basis of, for example, one month's sale plus parts and accessories and service to customers on a credit basis.

Q. Does a planning potential have something to do with that?

A. The planning potential would have something to do with determining what the sales volume was going to be and what the operating expenses of the business would be.

The new car inventory would be based upon 30 to 40 days' supply of cars, for example. Used car inventory requirements may be on a 30-day supply. Parts inventory perhaps on a three months' supply and fixed equipment, tools and so forth, based on a study of the shop requirements.

The real estate can be handled in any one of a number

of different ways. If a dealer is going to build his own [fol. 631] building, buy his own property and have it as a part of the business, of course that becomes an additional capital requirement over and above the operating capital.

However, in other cases dealers are successful in renting quarters or having somebody build for them as an investment and then leasing it back from them. Under those circumstances, of course, there would be no capital requirement for building purposes.

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[fol. 632] Q. Does your spacing of dealers have something to do with giving this man a profit potential?

A. It has a great deal to do with giving the man a profit potential, because if we were attempting to set up a dealer next door or a block away, for example, from an existing dealer and tried to attract the kind of investments that are required in this business, it would be an impossible task. We just couldn't do it.

The Court: One thing follows the other. In other words, to get a businessman that has a million dollars is not easy, is it?

The Witness: No, sir, that is a major program.

The Court: If he has worked hard enough and is smart enough to make a million dollars he is not anxious to throw it away.

The Witness: No.

The Court: Unless you can offer him—what you are saying is that unless you can offer him something that is going to attract income to his capital, a return on it, why, you know he will not linger very long with you. That is just plain common sense, isn't it?

[fols. 633-634] The Witness: That is very plain common sense. And beyond the amount of capital he is investing, I think we have to also consider the fact that if we are considering him for a dealer, he is an experienced man who is going to have to invest in addition to his capital his time and his ability, and what we have to offer a dealer, through our present plan of deciding and determining dealer locations, is a location from which he can operate in a competitive manner in a metropolitan area solely on

the basis of his ability to sell in competition with other dealers, to serve in competition with other dealers— and by other dealers I mean dealers handling Chevrolets or other General Motors cars, as the case may be, as well as those dealers handling competitive makes.

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[fol. 635] By Mr. Mitchell:

Q. Is it difficult to obtain good dealers?

A. Yes, it is very difficult to obtain good dealers. We go through quite a screening process before we appoint a dealer.

Q. Having obtained a good dealer, are you in a very big hurry to push him out if he makes some mistakes or perhaps even violates his Dealer Selling Agreement?

A. No, we are in no hurry to terminate dealers. As a matter of fact, we resort to termination only as a last resort. It is our policy to work with our dealers. We feel that their interests in a particular area are compatible with ours. We have a mutual interest in building customer goodwill, selling our product, taking good care of our customers, and we approach our dealer relations on that basis.

We have a very large field organization and we pay a great deal of attention to the problem of working with [fol. 636] the dealers in the pursuit of these common objectives. We go to great lengths to correct any differences of opinion or resolve any differences of opinion and bring about whatever changes might be required to make for a better over-all operation.

Q. Now, you speak about not putting another dealer in next door to a man that you located with a profit potential. Do you make any guarantee to a dealer that you will not locate another dealer in his neighborhood or elsewhere?

A. No, we make no guarantee to any dealer with respect to a location of other dealers. However, we do have, as part of our metropolitan area selling agreements, what we call a metropolitan area addendum.

By the provisions of this addendum we agree that there will be no change in location of any existing dealership at the time this is signed nor will there be any additional

dealers placed in the metropolitan area until after 60 days' notice has been given to all dealers in the area.

[fol. 637] By Mr. Mitchell:

Q. I believe you used the words "dealer points" there, don't you, in your addendum?

A. Dealer point, that's right.

Q. So that during that sixty days that gives the dealer whose area is being invaded, if he thinks it is, what kind of a chance?

A. Well, that gives all of the dealers in the metropolitan area who might feel that there was any phase of the proposed program that would create problems for them, an opportunity to state their position, or their belief on the proposed move for consideration, before the decision was finally executed.

Q. And who makes the decision?

A. Chevrolet, or General Motors makes the decision.

Q. And not the dealer?

A. And not the dealer. All we do is provide an opportunity for any dealer who might feel that he was aggrieved in any way to state his case before the decision became final.

Q. Now, the Los Angeles metropolitan area is defined in stipulation of facts No. 1 which is now in evidence. But you spoke about metropolitan areas. There are other metropolitan areas in the United States.

A. Yes, there are many metropolitan areas in the [fol. 638] United States.

Q. What is your definition, for the purposes of your franchise system, as to a metropolitan area?

A. Well, generally, a metropolitan area is where we require multiple dealer representations to do the sales and service job we think should be done.

Q. Is there a population basis for that?

A. No, not a strict population basis. But I would say that the, perhaps the minimum metropolitan area would be somewhere in the area of 50,000 population.

Q. You spoke, Mr. Roche, about making a study to determine where to locate these dealer points, both for the purpose of giving the dealer a proper profit potential, and for the purpose of having him so geographically located as to be able conveniently to serve the public. What kind

of a study did you make? Just describe that for the court. Was this a haphazard affair, or what is it, in some detail?

A. No, it is a very deailed study of many factors in a community.

Q. Do you have a department that is engaged in that sort of thing?

A. Yes, we have several departments that are engaged in this sort of activity.

First of all, each one of our car divisions has its own [fol. 639] department which engages in this activity.

And their purpose is to study continuously all of the areas and all of our markets in the United States to make certain that we are properly represented, that we don't have too few, we don't have too many dealers. We try to have the right number.

Q. The right number for what?

A. To provide maximum sales for Chevrolet products and General Motors products, and good service for our customers.

These survey teams are working continuously, as I mentioned. And they will formulate for divisional use, in the case of Chevrolet, Chevrolet use their recommendations and their suggestions as to moves that should be made in a particular metropolitan area.

These suggestions will, of course, be cleared through the zone and regional offices, finally have the approval of the Chevrolet central offices. And then they would be referred to the central office of General Motors for final approval.

In the central office of General Motors we maintain survey teams, as we call them, survey departments, statistical departments for making comparable studies independently of all of the car divisions.

[fol. 640] The recommendation then of the respective car divisions would be checked against the thinking of the General Motors central office survey activity. And then final approval, or disapproval, would be made, based on the facts that were developed, in conjunction with the surveys, and with the data that was developed.

Now, in studying these areas there are, of course, many, many factors which have to be considered. In our business we are fortunate in knowing, soon after the close of each month, exactly what the new car volume has been.

We know what we have sold. We know what our competitors have sold. We know whether or not our sales performance in a particular area is equal to the share that we are getting over-all.

We have the additional advantage—

Q. How do you know that?

A. As a result of statistical information registration service which is sold to us by the R. L. Polk Company, which is a statistical organization who accumulates and sells this registration data to us, and to the other automobile manufacturers, to insurance companies, to tire companies nationally, who also has reason for wanting the information to sell automotive products of one kind or another.

So we have this information and we can get it. We [fol. 641] have it year by year. We can get it month by month if we want it.

Then additionally, on an annual basis we, of course, have available to us a census, so to speak, of all of the car ownerships in a particular area, city or county, or block-by-block, if we want to get it on that basis.

So we know what kind of a vehicle population we have, what the service potential would be, and what the new car potential would be over a period of years.

In addition to all of this information, of course, we have to be concerned with other factors, such as the income data for the residents of the particular area, the plans for the development of the area. Is this going to be an area that is going to have an extensive suburban development, for example? Is it a metropolitan area? Is it going to have—is it going to be a new housing project? Is a new manufacturing plant going into the area? What is the highway program? What is the traffic flow going to be?

All of these things have to be consolidated and brought together to determine whether or not our representation is adequate to provide the volume of business and the care for owners that we expect.

Then after we have made this determination, we either [fol. 642] decide that it is or it isn't.

If we have decided that we need another dealership, then we have to be very much concerned about where are

we going to put it? Where can this dealership be put so that it will do this job that we are talking about, and will result in the proper opportunity for the individual that we expect to put in it? And at the same time to preserve the profit opportunities for our dealers in the other areas.

And of course by "profit opportunities," I mean exactly that. Nobody that takes a Chevrolet dealership—or any other General Motors dealership—has a guaranteed profit opportunity. He has an opportunity to earn, in a reasonable business location and a very highly competitive market, whatever kind of a return he needs to justify his risk of capital and time in the particular project.

[fol. 643] Q. Do you let your zone managers, for instance, or the zone manager in the Los Angeles metropolitan area determine how many more dealer outlets there shall be and where they shall be located?

A. No, we do not. We, of course, would listen to his recommendation and if the zone manager in Los Angeles or anywhere else had any ideas as to the revamping of our dealer structure, he, of course, would communicate those ideas to his superior.

Following this the divisional survey team would be brought into play, to check the zone manager's judgment against the facts that could be developed through this survey system that I have described.

The central office of the corporation is making similar studies regularly and eventually this, the different conclusions of these studies would be brought together for final determination, as to whether or not an additional location would be needed.

Q. Can the division itself make the final determination as to whether or not another location shall be permitted?

A. No, it cannot. It has to be approved by the central office of General Motors Corporation.

Q. Do you let your dealers out here determine whether they will have another location, shall we say?

[fol. 644] A. No, sir, we do not. We have a provision in our selling agreement which prevents, prohibits dealers setting up locations which are not approved by Chevrolet Division.

Q. Do you let the dealers make arrangements with somebody else to sell his cars for him at another location?

A. No, sir, we do not.

Q. How long has this been going on, this business of a careful survey in an attempt to make an intelligent geographical setup for your dealer system?

A. Well, in General Motors it has been going on for a long time. Again going back to the early days of the automobile industry, dealers were appointed on a rather haphazard basis, without too much consideration for some of the factors which I have enumerated.

Q. When was this that you are talking about?

A. I am talking about back in the '20's, late—up to the late '20's perhaps, because at that stage of the development and growth of the automobile industry we had not perfected what Mr. Sloan has described as the scientific approach in the development of the proper distribution structure.

It became quite evident in the late—particularly in the late '20's that the system that had been in use was no longer adequate. The dealer mortality rate was quite high. Dealers were having a great deal of difficulty in attracting [fol. 645] dealers and in many cases dealers didn't have adequate facilities and were not—

Q. You said the dealers were having difficulty in attracting dealers. You meant the manufacturer?

A. That is right. They were not properly organized and we had too many of them. As a matter of fact, at the end of '29 the industry had the largest number of dealers in all of the years it had been in business. If my memory serves me right, I think we had about 51,200 dealers in the automobile industry at that time.

Q. How many are there now?

A. There are about 33,000, including some foreign dealers. So, you see, there has been quite a change. Back in 1929 the volume, of course, was considerably less than it is now. We in General Motors began to become quite disturbed about this trend in the very late '20's and decided that something had to be done about it, to try to bring more stability, more reliability and greater continuity into operation of our dealerships.

So we started on a preliminary basis back in those days and the facts, the details regarding the dealers' operations were very skimpy, very sketchy. So, one of the first things

we did in an attempt to provide a solid basis, in fact, for some of the conclusions that we felt had to be made, was to develop a uniform accounting system which would [fol. 646] be used by dealers generally so that we could bring some semblance of order into their record-keeping, and so they would know what they were doing and we would know something about their operations.

So there was started back in the late '20's, as I have indicated, a uniform accounting system that was developed. The use of that accounting system was made a provision of our contract, selling agreement, and it continued to be so up until this time.

We got into the early '30's and our conclusions along this line, I think, were very much confirmed because, as we all remember, the depression set in and for the three years following 1929 our new car business dropped off almost two-thirds and the number of dealers who went broke or out of business represented almost one-third of the total.

So it was in this early '30's period that we decided that this area approach, this survey approach was the one which would give us the key to the problem, which was that it wasn't the number of dealers that we had, but it was the kind of dealers we had and where they were located and where there was a profit—a proper profit potential in a competitive market, where they could sell and service our products and make a return on the investment that was required.

Q. The right number in the right place was important [fols. 647-649] to you?

A. The right number in the right location is, of course, most important. So we started back in the early and middle '30's, and I think that we have continually since then perfected our techniques.

We have perfected and broadened the scope of the various factors that we use to determine the location and the number of dealers that we think we should have.

Out of all this has come a system that we are using today and have been using for quite some time and we feel that it is a very business-like, very realistic approach, which is based on facts and not speculation.

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[fol. 650] Q. What does the dealer who is a party to such a contract, what advantage does he have?

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[fol. 651] The Witness: Every Chevrolet dealer, every General Motors dealer, whether he is in a metropolitan area or wherever he may be located, but more particularly in a metropolitan area, is expected to sell his product, and does sell his product, and succeeds only to the extent that he can sell his product on a competitive basis with other dealers handling the same product, with other dealers handling competitive products in the same price range, and with essentially some of the same features and specifications, at least in print.

A Chevrolet dealer, or a General Motors dealer who has been selected and appointed for one of these particular locations in a metropolitan area has to do all of these [fol. 652] things. He enjoys only one advantage over his fellow Chevrolet dealers in the same community, and that is the proximity, or the closeness of his place of business, which is situated as nearly as possible to the center of the market that he is expected to cover, makes his location a more convenient place for a customer to purchase his car, makes it a more convenient place for the customer to take the car back for service.

Now, unless that dealer is competitive in every sense of the word, unless that dealer is equipped, and does render good service, the chances are that his customers will go somewhere else. And they have a wide choice.

By Mr. Mitchell:

Q. Do you place any restriction on where a customer may purchase his Chevrolet?

A. No.

Q. Or from whom?

A. There is absolutely no restriction on any Chevrolet customer as to where he purchases his car or where he takes it for service. That is entirely a matter for the free choice and decision of the individual Chevrolet owner.

Q. Is there any restriction on the price at which a dealer may sell, wherever he is, to any customer, or any

restriction upon the customer of a price at which he may [fol. 653] buy?

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[fols. 654-656] The Witness: No. Chevrolet does not impose any restrictions whatsoever with respect to the prices to which any product may be sold.

By Mr. Mitchell:

Q. By the dealer?

A. By the dealer.

Q. In or out of the contract?

A. In or out of the contract, it makes no difference.

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[fol. 657] Q. We have been talking about Section 6 of the terms and conditions, the location restrictions, the Dealer Selling Agreement, which is in evidence, and also has the paragraph 29 dealing with the farming out of merchandising obligations.

Why do you have a paragraph 29 with such a provision?

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The Witness: We regard our selling agreement with our dealers, I think, as a personal service agreement. The selection of a dealer to us is more important than the [fol. 658] amount of capital, for example, that he might have.

By Mr. Mitchell:

Q. You actually have a means of loaning dealers capital?

A. Yes, we do, which helps provide capital for people of ability who might not have a sufficient mount of money to take on the business with their own resources.

Our most important consideration is to find an aggressive individual who has experience in the automobile business, who knows how to sell cars, who knows how to take care of customers, who knows how to merchandise used cars, who knows how to run a service operation and in

whom we would have confidence that he would aggressively pursue the sale of our products in the area for which he was responsible.

The Court: Well, —excuse me.

The Witness: Obviously, if we were to have the type of an agreement whereby we would agree with such an individual and then have it possible for him to delegate these responsibilities to somebody else who might be less qualified, somebody who we might not even know, had no interest in, knew nothing about their qualifications, then certainly we would not have the kind of an operation that we envisioned at the time we entered into the agreement with this particular individual.

The Court: One of the things, I would assume, above all, that you would want is somebody you not had confidence in selling, but you had confidence in his reputation [fol. 659] and character.

The Witness: Integrity.

The Court: Honor and integrity. Wouldn't that be important?

The Witness: That would be most important. His honor, his business background and integrity and all are equally important to his ability to sell.

In other words, we seek a well rounded individual who will make a reputable representative for us, one who will bring credit to the sale of Chevrolet's name and General Motor's name, as well as to the reputation of his own company and his reputation as an individual in the community.

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[fol. 660] By Mr. Mitchell:

Q. Does a stable dealer organization provide for Chevrolet any aid in discharging manufacturer's responsibilities, such as latent, remedying latent defects, preventing failures which result in manufacturer liability, discharge of warranty liabilities, and if so, what aid does the stable dealer organization render in those respects?

A. Well, very definitely a stable and a capable well [fol. 661] trained dealer organization renders invaluable service on certain occasions where, for reasons beyond

everyone's control, a particular product problem might develop.

I know from first-hand experience of an example that we had when I was in Cadillac, for example, where had we not had the type of dealer organization that I am talking about, and where we had not been able to move very quickly on a product problem that was almost impossible to have determined in advance, that some very serious consequences could have resulted.

Q. I think it would be well if you would tell the court the problem, if you will, please.

A. Well, the problem was this: We had had introduced a new model and just gotten our production under way and we had a report on one of the first cars that was delivered to a customer in Arizona, that there had been a very serious failure of the lower suspension, the rear lower suspension control arm.

Fortunately, the driver of the car was not injured. We were unable to understand the reasons for this failure and we had the parts of this particular piece flown back to Detroit for analysis, and we could find nothing at all that would account for the failure. Any of the tests of the steel that was involved indicated that the steel was satisfactory and that there was just no reason for this kind of a failure.

[fol. 662] The Witness: We immediately tried to duplicate similar failures. I personally was in on many of these attempts in our proving grounds, over the roughest roads that we could find, at highest speeds we could go, over a very large bump in the road, and still keep the car, have the car come back on to its four wheels. And still no answer to this problem.

We had our research laboratories make detailed analyses of random sections of these parts. And again no conclusive result.

Finally we resorted to additional tests which were called draw-bar tests, which is a test of destruction of the part by pulling. And we finally found what we thought was the difficulty.

This was the "I" of the suspension arm which was made for us by a supplier house, who in turn had these "I's"

produced for him by another supplier, foundry heat-treating company over in the Chicago area.

We traced these back to the point where we had to analyze the operation of the heat-treating furnaces, sent our people over there, sent some of the supplier's people over there, the engineers, to make detailed studies of the operation of the furnaces during the time that they had been producing these parts.

We checked over the experiences and found that over [fol. 663] a certain period of time there had been a defect, a minor defect in one of the doors on this heat-treating furnace. And before this defect was fixed they had produced approximately 2,000 of these pieces.

As a result of having this information we could identify the dates, and when those pieces were assembled into cars. So that we knew at that point that we had 2,000 cars on the road that conceivably could have a similar problem.

We were able to identify very precisely those cars. We knew exactly where they were, where they went and we alerted every one of our dealers who had had one of these engine numbers, and got some new parts and sent these parts to the dealers, had the dealers call in all of these vehicles that were on the road and make the necessary changes to install the new parts and take out the parts that might—but not necessarily would—fail.

Now, were it not for an experienced, capable dealer organization, one with whom we had a very close liaison, one where we could very quickly, in an emergency situation such as that, reach these customers, the result could have been quite different.

But as it was we were able to reach these cars, make the necessary changes, and that was the end of the problem.

[fol. 664] By Mr. Mitchell:

Q. Now, what service does a stable franchise dealer organization provide for you in avoiding manufacturer's liability for failures?

A. Well, having a stable dealer organization, and again a dealer organization who have capable mechanics and the skilled help required to make the necessary service adjustments that are required, whether they be due to a warranty problem or whether they be due to an ordinary wear

and tear problem is of great assistance in reducing the potential liability which would be attached, were serious failures to occur in a car, in the absence of having such service available.

Q. What service does a stable dealer organization provide for you in discharging warranty responsibilities?

A. Well, a stable dealer organization, of course, would provide the means by which we can assume and satisfy all of our warranty requirements, insofar as our customers are concerned.

And that is the only means that we use of satisfying our warranty requirements.

The Court: I take it you have made replacements of parts, even after the warranty periods have run, haven't you?

The Witness: Yes, your Honor, we have.

[fol. 665] The Court: That is usually a procedure, I take it, that comes on recommendation of a dealer, does it?

The Witness: It would come through a recommendation of the dealer, together with our consideration of the reasons for the particular failure.

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The Court: You don't always go along with the dealer.

The Witness: No, we don't. But as I say, where we assume the responsibility beyond the warranty period, we would call that a policy adjustment.

The Court: Yes.

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[fol. 666] The Court: Now, I take it that the dealer situation reflects on the dealer trying to satisfy the customer, even to the extent of going beyond the technical terms of the warranty, is that right, in many cases?

The Witness: In many cases a dealer will do that. In many cases the dealer will make certain free adjustments or corrections for a customer which might not come in under our warranty policy.

The Court: I take it—

The Witness: The warranty policy.

The Court: I take it we can, as reasonable human

beings, assume that he is doing that with the hopes of making a future prospect out of that particular customer, is that right?

The Witness: That's right.

The Court: Renewing his business.

The Witness: He is doing that only as an investment [fols. 667-668] and the good will of that customer, in the hope of selling him another car, and retaining his service business.

As I mentioned, I think, earlier a very substantial percentage, 70 per cent of our business comes from repeat owners. And the loyalty of an owner to a dealer is important to the dealer, and it is just as important to the dealer as it is to us, as the manufacturer of the product.

So I think our dealers are very conscious of this tremendous asset that they have in customer loyalty, and that they will do many things, when a customer experiences unusual difficulties with his car, to try to work it out, either through the application of our warranty policy or through the combination of our warranty policies and whatever the dealer might like to invest in terms of money for retaining good will.

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[fol. 669] By Mr. Mitchell:

Q. You spoke earlier about a stable dealer organization aiding in the manufacturing process.

Briefly I would like to have you tell the court what service the stable dealer performs actually in the manufacturing process. By that I mean from design on through to the day that he takes delivery of the car.

A. Well, the dealer—the dealers perform a very important function with respect to all phases of our design and manufacturing processes.

First of all, with the exception of a very limited number of retail branches we discussed this morning, our principal source of information with respect to customer tastes and preferences, trends, and so forth, has to come from expressions from our dealer bodies, in the contact of our field men, field organization, and through other

channels of communication that we would have with our dealer group.

We operate in the automobile business, of course, a very complicated manufacturing organization. We deal—we are dealing with mechanical products, heavy products, heavy industry products, which require very complicated [fol. 670] and expensive tooling, jigs, fixtures, dies, presses, machinery and equipment, as well as manufacturing plants. All of this has to be integrated and we, of course, eventually have to build whatever the product is that has been designed.

We seek the counsel and the advice of our dealers, in trying to meet to the best of our ability the demands of the market place. These ideas that we get from the dealers then are coordinated with our own.

We have extensive engineering departments, we have styling departments, we have manufacturing, planning activities. All of these have to be brought together in our own organization before we can produce any cars.

Then beyond that we are dependent to a very large degree upon the components we purchase on the outside from suppliers of raw materials, suppliers of components, finished components that will eventually be assembled into the vehicle. This is a long complicated process, and we have to work on rather long lead times.

For example, it is not uncommon for us to start on a styling project maybe four to five years ahead of the time that we expect that to come into being, that particular model.

It is not uncommon to start four or five years on a mechanical improvement, new transmission or new engine or new steering arrangement or any of the new brakes, [fol. 671] or whatever the problem might be.

We have to work from the standpoint of long—these long lead times and we have to have and seek counsel and advice of everyone who can make a contribution in this area. Certainly, our dealers do that to a very great extent.

Then after we are in production and perhaps most importantly of all we are faced with the problem of how many of these vehicles are we going to produce, what are the volume potentials for what we—for these new models

we are going to bring out, and what are the potentials on an annual basis first.

We have to try to guess the market on an annual basis and then more realistically we have to try to guess the market on a week, 10-day period, monthly period, three- or four-month period to the best of our ability. I suppose it is in this area when we get—after the new model is launched and we have had the benefit of everybody's experience, when we get right up to the point where we are going to start producing, where we have an organization of many thousands of employees and have enlisted the aid of thousands of suppliers who, in turn, have thousands of employees, that from that point on the precision with which we can build these products to satisfy the market and maintain our operations with reasonable stability for our employees working, keep the employees of our suppliers and others employed that is really the crux of the situation.

[fol. 672] We have in General Motors built up over the years a very close liaison with our dealer organization. We get, first of all, from every dealer in the United States a ten-day report showing the number of new cars that he has sold by models, the number of new cars he still has on hand, the number of used cars that he has sold, the number of used cars he has on hand.

The Court: What do you mean, a ten-day report, every ten days?

The Witness: Yes, every ten days, the 10th and 20th and end of the month.

This statistical data is computed and totaled. It usually takes us about three days, three to four days after the end of each ten-day period to consolidate the information for all of our dealers in a particular division.

Even beyond that, that tells us then what the current situation is as of the last ten days, not only in the United States as a whole but in each dealer's area and each zone area and each regional area.

Beyond that we have the longer range problem, because we have to commit for materials a long time in advance. For example, we have to commit for steel in seven and a half to ten weeks in advance. We have to commit for aluminium nine weeks in advance. We have to commit for

lead six weeks in advance. We have to commit for copper [fol. 673] eight or nine weeks in advance.

The most difficult problem with which we have to deal is fabrics for our trim material. We have to commit 21 weeks in advance on trim material. The trim style, of course, changes every year and if we make a mistake it can be a very costly one, if we overbuy.

This means we have to plan our production with all of these limitations in mind. We can't just start it on Monday morning and stop it on Friday night and call it a day. We have to look out over a long range of time, so we have the additional liaison with our dealers who give us each month a forecast of their requirements for that month, plus the three ensuing months.

So we have—this is not a commitment to buy or take any number of cars. This is simply a forecast on the part of the dealer as to what he thinks he can sell in his particular area over that period of time.

These reports come in to—these forecasts come into our field offices around the country. They are consolidated and sent into the regional offices. From the regional offices they go into the central office of the various car divisions.

They are examined, studied in the light of known conditions and factors which might affect the market one way or another in planning. Perhaps in some cases it might be [fol. 674] beyond the dealer's comprehension, but they then, in turn, adjust these forecasts which then go on to the central office of the corporation who have the responsibility for further analysis and final determination, in conjunction with the division, as to what those schedules will be.

[fol. 675] The Witness: In the central office of the corporation, as a part of the distribution, our marketing staff activity.

There is quite an economist section who are continually studying these trends, as well as the general business conditions throughout the country, basic business trends on which long range plans can be made.

These facts, together with their appraisal of the market conditions then are brought to the central office scheduling committee, as we call it, who has the final

responsibility for approving or disapproving the schedules requested by the various car divisions.

The scheduling committee includes the chairman of the board, the president, the four executive vice presidents, and several vice presidents, including the vice president in charge of manufacture, the vice president in charge of the marketing staff, and the vice president in charge of personnel.

So that we bring all phases, we try to bring all phases of our operation together at one time to evaluate and, to the best of our ability, determine a realistic and practical production schedule, so that we will build the number of cars that are required to satisfy the demand, as we see it, for Chevrolets—and all other General Motors products.

[fol. 676] Now, without access to a means for taking the pulse, the real pulse of conditions in the field, which we do through our franchise dealer organizations, this kind of a system would be impossible, and it would greatly handicap our ability to maintain our manufacturing operation and our employment, or anything approaching a stable organization, even in spite of all of these precautions, for economic reasons and other frequent schedule changes can still be required.

But this job is made much simpler by us having access to the conditions as they exist in every dealership across the country, from the standpoint of measuring and trying to determine the current, as well as the next three or four months, status of the market in each community.

By Mr. Mitchell:

Q. Does the stable dealer organization that you strive for have any part to play in the matter of storage of these vehicles?

A. Well, it has a very important part to play in the storage of the vehicles because we, of course—and all other manufacturers, all other automobile manufacturers—do not have the space or the capital to provide storage facilities for large numbers of cars.

These vehicles have to be shipped as they are produced, in most cases. In our plant we would operate on [fol. 677] the basis of having about one and a half days' inventory in finished vehicles across the country in our

plants, which means virtually that this material has to flow in to the plant in the form of components or raw material, and out almost simultaneously in the form of finished products.

So the dealer carries the inventory of finished product beyond the two-week period, in our case, if the car is unsold.

[fol. 678] And we carry in our plant one and a half days' supply, plus much longer periods of supply for the basic materials, such as steel, aluminum, copper, glass, trim materials, things like that.

But the key to the situation, of course, is the finished product. And obviously in the quantities in which automobiles are built and sold there is no location on the part of any manufacturer that could accumulate much beyond this day and a half supply that I am talking about.

So the dealers, we are entirely dependent upon the dealer organization to take up this flow.

The Court: How much, just as an approximation—could you give me an approximation of how many cars would you say today are, Chevrolets, that are on the lots of the dealers in the metropolitan area involved in this case? Could you make a guess?

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[fol. 679] The Witness: Yes, I can probably give you a quick approximation. I would say probably somewhere in the neighborhood of 9,000 cars.

The Court: That is for the whole 85?

The Witness: For the whole 85, yes.

The Court: 9,000 cars. Let's make it round figures and say 9,000.

What kind of space—do you have any idea how much space that would take to store those cars?

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[fol. 680] The Witness: It would take 300 square feet of space for a car; it probably would not be too bad. That would mean that we could get 140 cars on an acre. So we would need about 80 acres.

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By Mr. Mitchell:

Q. And do these stable dealers also take off your hands the cars, purchasing them at the same time?

A. Not simultaneously—yes, they do purchase them at the same time. But we give them what we call 15 days free interest period in carrying the inventory for the first 15 days they would be in stock.

Q. But after 15 days you are paid?

A. No. Then they take title to the cars.

Q. And you are paid?

A. Yes.

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[fol. 681] Q. What does this ability to have this full production with the aid of a stable dealer organization mean to the car buying public?

A. Well, it means to the car buying public more value for their automobile dollar because if we did not have this stability, this ability to maintain this flow of cars into these organized channels of distribution, and were we to have to resort to some haphazard method for doing it, it would create manufacturing and distribution problems which could have only one result, and that would be to increase the price of cars to the customers.

Q. What does it mean to the national economy?

A. Well, it means a great deal to the national economy, because in the modern United States today—as well as many other important countries throughout the world—the automobile economy is perhaps the most important segment of the economy.

Today in the automobile industry one — or in the United States industry—one out of every six businesses is [fol. 682] automotive oriented.

We consume in the automobile industry a substantial portion of, a very substantial portion of the products of our industries. We consume, for example, 43 per cent of sheet steel. We consume 28 per cent of sheet copper. We consume 47 per cent of aluminum castings. We consume 37 per cent of lead. We consume 60 per cent of rubber, plus a very high percentage of glass.

And beyond that, the employment in the automotive

industry, plus other highway industries that serve the automobile needs of our people, account for one-seventh of all of the employees that are gainfully employed in the United States. And there are 11,000,000 people employed in these activities.

[fol. 683] So I think that anything which would serve to disrupt the automobile industry, the stability that we, together with the other manufacturers, have been able to bring into it over the years, as a result of the refinement of these processes which I have been discussing today, could have very serious repercussions on the business economy of the United States as we know it today.

Q. All right. Mr. Roche, when these dealers out here started selling cars in quantity through discount houses, you had to decide what to do, what, if anything, to do about it.

Why did you try to persuade the dealers to cease and desist this sort of thing?

A. Well, we decided to persuade the dealers to cease and desist because we regarded this type of merchandising as a very serious threat to our franchise system of distribution.

Q. All right. Why?

A. Because it could have only one result and that would be to destroy the stability liaison, the franchise dealer system of operation as it has been brought to its present state today.

Instead of that we would have had an utterly chaotic condition under which we would be building cars perhaps in one month to satisfy what apparently was a very large demand and when we got into another month, a few [fol. 684] months perhaps removed, we would find a situation where we would have no business at all.

Q. What did some dealers' use of discount houses have to do with this? They were still franchise dealers using these discount houses as outlets. What does that have to do with the problem you are talking about?

A. It would have a very serious effect on the problem because, as I recall the data, about 70 per cent of our dealers in the Los Angeles area were located within five miles of a discount house.

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Q. Let me show you Defendants' Exhibit BU. That is the exhibit you are referring to?

A. Yes.

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Q. What significance does that have in respect of these [fol. 685] problems which you are talking about?

A. Plenty.

Q. So there are discount houses located in the proximity of 70 per cent of the dealers?

A. Well, the discount houses are located in areas and in proximities, as compared with the dealer's location, in areas where we had not seen fit to appoint a dealer.

Q. Why didn't you appoint another dealer there?

A. Because we didn't feel that the area would support another dealer nor was the area required to sell—for sales or service to our customers in that area and that had we appointed dealers there, in line with our basic marketing plans and systems that we used to determine dealer location, that it could have had only one result and that would have been to have driven some of the existing dealers out of business because the area would not be productive enough to support both types of activities.

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[fol. 686] Q. In locating 21, which is Cone Brothers, I take it you attempt to locate him at a place where, in his neighborhood, he would have a profit potential?

A. That is correct.

Q. All right. So comes a dealer or dealers and sells cars through these points called 5, 11, 21 and 2, which I just related to the court.

What kind of a situation does that create, in your view, [fol. 687] in respect of the stable dealer organization at 21?

A. Well, I think it has a very serious effect with respect to the dealer location that we had selected after a great deal of thought and study, as to where it should be, because these two additional locations were going to dilute the normal market potential, which was available to this

established dealership, it would have many very adverse effects.

[fol. 688] The Witness: First of all, it would take business away, perhaps, from this particular dealer, to the point where the franchise would no longer be attractive to him. And if that were the case and he quit, then we would be left without a dealer in a location that we regarded as being a very, very important location.

Instead of that dealership, we would have two other locations who had no allegiance to us, two locations which we had no measure of influence whatsoever in how they promoted the sales of our product.

We would have two locations which had no allegiance to Chevrolet products because they would be selling other makes of cars as well. And if the customer even waived for any number of reasons, it would be a simple matter to divert him to some other, which of course wouldn't happen at a regular Chevrolet dealership.

Additionally, these other outlets, of course, had absolutely no service facilities, they carried no stock of genuine parts or accessories with which to service these vehicles, they had no responsibility whatsoever after the vehicle, after they had completed the transaction whereby the vehicle was sold.

Now, all of these liaison factors to which we attract such great significance, of course, would be completely lost with this type of operation.

[fol. 689] And they are dealing here, were dealing on the basis of being able to make sales as it was convenient for them to make them. They had absolutely no responsibility beyond the casual sale that they might be able to attract. They had no organized system for going out and doing constructive selling work in the line of developing prospects or customers for Chevrolet cars.

The Court: What you are saying is that they can't serve two masters at one time, is that right?

The Witness: That's right, your Honor.

The Court: And if the man there was not at least bound by a contract or loyalty, that he could say, I have a Chevrolet, I have a Plymouth, I have a Ford, take your choice. And whichever was the best deal for the man at the discount house would be the product he would sell?

The Witness: And that is exactly the way they did it, even going so far as to advertise that very choice and offering it to the motoring public in Los Angeles.

By Mr. Mitchell:

Q. Now, what if there were—the record here shows that there were 23 discount houses in the Los Angeles metropolitan area—this was back in 1960, with the thing still growing—what if dealers, by arrangement with these [fols. 690-691] discount houses, create 23 places in this area through which they can sell their cars, so that 59 out of the total of 85 Chevrolet dealers have one of these additional so-called outlets in the neighboring area of five miles. What do you think that does to your stable dealer organizations that you are depending on?

A. I think that if it continued that it would destroy the stable system of dealer operation which I have described and upon which the very foundation of our business is built.

Q. You mean it would go away entirely?

A. It would destroy the franchise system of distribution and stability that we now enjoy in the automobile industry.

Q. Why would it do that? Is everybody going to quit? Why do you think it would do that?

A. I think that this system of distribution with this proliferation, multiplicity of outlets that the franchise dealer would find his business so unattractive financially that he would get out of the business.

And then the automobile industry, or ourselves, would be left to the device of trying to develop individual customers, or markets, whatever they might be.

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[fol. 692]

June 18, 1964.

Direct Examination (Continued)

By Mr. Mitchell:

Q. At the close of yesterday's session, just prior to a discussion the court and counsel had with respect to the progress of the case, the number of witnesses, the court asked a question and our getting into the progress of the case used up the rest of the day, so you didn't have a chance to answer it.

But I would like to have you answer it now. The court's question was:

"Why wouldn't it develop that you get rid of the weak, say, out of 85 you would cut it down to say, 5 or 10 real strong Chevrolet dealers, and they would have all the discount houses working for them and you would sell just as many automobiles. What is your answer to that?"

A. My answer to that is it would have a very serious effect upon the business done by Chevrolet. I say that because we have determined the number of outlets required for this market after a very painstaking survey of the competitive conditions, economic factors, the geo-[fol. 693] graphic conditions and layout of the area and all the other factors that would lead to an intelligent decision.

But if we were to eliminate all but five to ten of our dealers and if we needed 85 outlets to provide the sales facilities or exposure to our products we think we need, it would mean, of course, we would need from 75 to 80 discount houses in addition to the five to ten dealers.

Whether or not those discount houses would be available, of course, leaving the other equities of the situation aside for the moment, is questionable, in my opinion.

Even if they were available, and for the sake of argument we would say they would provide sales facilities or sales outlets, the fact remains that they do not and would not have the service facilities, the parts available and the specialized tools and equipment that are required

to maintain our products in the hands of the owners and do the kind of a service job to insure the efficient economical operation of our cars in the hands of our customers.

Q. But suppose——

A. If——

Q. Suppose the five or ten dealers had service facilities?

A. The five or ten dealers' service facilities, obviously, would not be located in such a manner as to provide [fol. 694] convenient access for our customers in a market of this size. We think we need 85 and not five or ten to serve these customers.

I think that if we were to confine our authorized Chevrolet service stations to five or ten outlets in this area that we would have such a chaotic condition nobody could expect to get even a semblance of reasonable service for their products.

Q. Does such a system as the court was asking about, theoretically does it have any semblance to the old distributor system that was abandoned?

A. It very definitely, I think, would perhaps resemble closely that distributor system. But, of course, it wouldn't be as good as that distributor system.

I commented yesterday that in the early days of the automobile industry that manufacturers generally followed the distributor system of distribution, under which a distributor undertook the distribution of the product for a certain area and it was his responsibility to appoint the dealers.

Under those circumstances a distributor had a very close relationship in most cases with the outlets. One of the requirements of those outlets was to provide service facilities and stock parts and generally try to protect and maintain the goodwill of the products.

[fol. 695] As the industry grew, and as I pointed out yesterday, this system began to have very important drawbacks because the prime interest in the good name of the product, the prime interest in maximizing the sale of products, of course, was with the manufacturer. Yet the manufacturer was in the position of having no direct rela-

tionship with those dealers because their contract again was with the distributor.

For that reason and in order to build the very close relationship that we need in the automobile business the distributor system was abandoned and changed over to what we call the zone system of operation whereby each outlet has a selling agreement directly with the manufacturer. That system has been abandoned by everybody. The last distributor, to my knowledge,—last distributor system was with the Cadillac organization and that will terminate on October 31, 1965.

So if we had to go to this type of distribution system whereby we would have a few dealers, with a large number of discount houses, we would be in an even worse position than we were with the distributor system and, in effect, we would be adopting a modified and very much weakened system of distribution, distributor system, as compared with the one we had before, and if it my considered opinion it would not work.

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[fol. 696] The Court: In planning the dealerships, I take it from what you say, you take into consideration the distances for the purpose of convenience of repairs to customers? Is that what you are saying?

The Witness: Yes, your Honor, we do. Where the people live, the traffic flow and their traveling habits, and we try to place these dealerships in such a position that they will be easily accessible to the customers in the area for which they are responsible.

The Court: Let me ask you this: There is, I take it, no inflexible rule about the distances?

The Witness: No, the distances would vary from one place to another. . Of course, you need a body of customers, you need enough people living in an area to support a dealership and then you try to locate that dealership where the people can get to it very conveniently.

The Court: Then I take it what I understood you to say yesterday was that the service end of the business, while it may not be profitable to the dealer, you consider

[fol. 697] it of utmost importance to the distribution of the product, is that right?

The Witness: It is most important to the distribution of the product, your Honor, because the very goodwill of our products depends on the kind of service that is available to them.

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[fol. 698] The Court: Do you have a system of inspection of dealers involved? How is that done?

The Witness: Well, anybody who—anybody who writes to the central office of Chevrolet or to somebody in General Motors, we try to handle that complaint just as promptly as we can. We refer the complaint to our zone office, No. 1, who, in turn, takes it up with the dealer and endeavors to get the customer in and correct whatever the problem is.

If the dealer needs technical advice or needs assistance in working out a solution, the zone office is there to [fol. 699] help him. If the zone office can't get the answer, they can refer it back to the central office of the division and maybe even back to the engineer, if that might be required.

[fols. 700-701] The Witness. So we would work with this customer. And if the customer was not satisfied with the dealership, then he would be contacted by some representative from the zone office, and followed through to a conclusion where we thought that he was completely satisfied.

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[fol. 702] By Mr. Mitchell:

Q. Let's talk about the question of the court last night, and assuming the type of distribution plan that he did assume. What would the effect be on product loyalty, do you think?

The Court: On what?

Mr. Mitchell: On product loyalty, the sales people.

The Witness: I think it would have a very important effect on product loyalty, because the discount house type of outlet could not possibly have the same kind of loyalty

toward the product that the franchise dealer, whose main interest in life was the selling and servicing of that particular product.

[fol. 703] I think that the discount house type of operation would be inclined to follow the line of least resistance with a product.

I think that if we had a particularly attractive and popular automobile model for a year, for example, that they would sell Chevrolets—or whatever the other General Motors line might be.

If, on the other hand, Ford or Plymouth should have a particularly attractive model, as compared with Chevrolet, then I think they would gravitate toward that particular line, with the result that there would be no continuity, there would be no stability of our operation.

Beyond that I think that it would tend to concentrate on, certainly the most popular lines. And we have many models, we have many different lines of cars, some of which don't move as fast as the others, some of which require a lot of sales effort.

I think the tendency would be to veer away from that type of merchandise.

Most importantly, perhaps, I think we would have the problem of our truck operations, for example. In our truck sales we have a great multiplicity of models. In certain types of trucks, there are virtually no two trucks alike. And designing the specifications for certain truck models becomes almost an engineering assignment, take [fols. 704-706] the engines and transmissions and the axles, and of course vehicle weight, load factors and all of the other things that have to be considered.

So certainly a discount house could not, in my opinion, function to serve that kind of purpose.

And if we had the type of setup that we are discussing now with five or ten dealers, and depending on the rest of the discount houses to do this job, I don't think it could be done. And neither could the five or the ten dealers spread themselves thinly enough to do this job against the truck competition that we encounter today.

By Mr. Mitchell:

Q. Assuming the type of distribution system that the court mentioned last night, what about your warranty obligations?

A. Well, it would be almost impossible, of course, to discharge our warranty obligations with five or ten outlets—

[fol. 707] Q. Under the system described by the court last night, what about the customer and his used-car value? He uses used cars as a part of the purchase price, so he has to get a proper price for his used car or he pays more on the face of things for the car.

A. Yes. In the average sale of a motorcar today a very high percentage of the cars sold involve a trade-in of a used car, and, of course, the value of that trade-in becomes a most important factor in the mind of the customer, because the higher the resale value of that car, of his used car, the less he is going to have to pay to enjoy the ownership of a new car.

Now, if we would confine our operations to five to ten dealerships in this area, the volume of used-car trades that would be involved would be such that these dealers [fol. 708] just physically couldn't handle them, with the result again that the disposal of these cars would have to be turned over to used-car dealers.

In so doing the control of the value of these assets in the hands of our customers, as represented by their used cars, would be very seriously affected because the tendency, of course, would be to buy those cars at the lowest possible price, with the result that the customer who continued to buy a new one then would have to add more money to what he was willing to spend to take advantage of the new car.

Each of our dealers operates their own used-car operation. They sell these cars at retail.

[fol. 709] Q. Further answering the court's question what do you say about the liaison that you have with your

dealers now in relation to the liaison you would have with five or ten dealers in the cars being sold through discount houses?

A. Well, of course, we have a very close liaison with our dealers under our present system of distribution. We work very closely with our dealers in all matters pertaining to the operation of this business, both from a sales and service standpoint.

If we had this other system, of course, that liaison would be completely destroyed, because we would be dealing with five or ten very large outlets and we would have no channels of communication with the additional number of discount house outlets that might be set up to attempt to sell our cars.

So, in effect, we would be losing almost completely the benefits that we enjoy from the liaison with our dealers. We would be losing, certainly, the stable outlet that we have for our products. We would be losing the benefit [fol. 710] of the counsel and advice that we get from our dealers with respect to our product and merchandising problems. And we would, certainly, be losing another very important advantage in the form of a market appraisal, the estimate of sales potential in these areas which our dealers provide on a regular basis.

Q. That is in connection with your manufacturing operation?

A. In connection with our manufacturing and scheduling operations.

Q. Why couldn't your five to ten dealers give you counsel on the matter of the needs and, therefore, on the matter of scheduling?

A. Well, five or ten dealers operating on, say a distributor system of distribution, modified distributor system of distribution, would not be close enough to the market to provide that information.

They would know perhaps from their own retail business, whatever business they might be doing, through—at retail through their own operation, but with 75 or 80 discount houses, that share of the retail business would be of a smaller percentage and would not accurately reflect the true market conditions.

So I think they would be greatly handicapped in at-

tempting to provide the kind of information we get today [fol. 711] from an area such as this, in the form of 85 different appraisals of the market and the estimated requirements, based on an individual dealer's appraisal of the sales potential in that particular area.

Q. Do you make any scheduling changes in which you use the advice of your dealer organizations?

A. Yes, we make a great many schedule changes because our business is very sensitive to the fluctuations of the economy. In 1960—in the 1960 model year we made 24 different schedule changes in an attempt to keep our operations adjusted to the market.

[fol. 712] By Mr. Mitchell:

Q. Is that for Chevrolets?

A. This is for Chevrolet only.

Q. And then making those schedule changes did you use the information which was provided for you by your dealer organizations?

A. Very definitely. We used that information provided by the dealer organizations, together with our other statistical information to arrive at what we thought was the proper distribution production schedule.

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The Court: What I mean is, I am talking now about—in other words, let's assume for the purpose of this question that the law of survival has taken over and 42 have gone by the wayside. You now have 43 left.

What would be your answer respecting the ability of General Motors to carry on effectively with 43 dealers, for example?

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[fol. 713] The Witness: Well, the service and the relationship, of course, we just couldn't possibly maintain with the 43, because we think we need practically twice that number today.

But I think that the important part of this question with respect to the accuracy with which they could furnish use forecast information on the market requirement is

that the discount houses would not be in a position to do that.

And they would not be in a position to do that because the discount house type of operation is operated as a department store. They depend on people coming in. They [fols. 714-715] depend on floor traffic, as we say. Somebody wants to buy a car, and they think they can buy one at a discount house, they go into the discount house and ask about it.

They do the same think in a dealership. And the floor traffic part of our business is an important part, and I am not making any attempt to minimize that.

But the floor traffic part of our business is only a part of it. And it is more important at certain times of the year than it is at others. It is more important at new model announcement time, for example. At the early spring peak it is more important.

But during the winter months, for example, all during the months approaching the clean-up, the floor traffic sometimes almost completely disappears.

And that is where our dealer organization, that is where our dealer sales organization under capable sales direction comes into play, because they have a group of salesmen, they maintain prospect files, they maintain register lists of customers, they know where the people live. And these salesmen are out making personal calls, they are out making telephone calls, making demonstrations, they are appraising cars and trying to deal with individual customers.

None of which, of course, would go on in a discount house setup.

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[fol. 716] By Mr. Mitchell:

Q. Well, whether the number of dealers are five or ten or forty-three using the discount house system, is it fair to say that it is just a matter of degree as to how bad it is going to be?

A. I think that, for the purpose of brevity and simplicity, that that describes it very well. It would just be a matter of degree.

I think that in our business we have had, over the years in my experience we have had experience with too many dealers, we have had experience with too few dealers, and we have had experience with the right number of dealers.

We have come to the conclusion, after very careful consideration, that we are going to sell more automobiles, we are going to do a better job of taking care of our customers if we have the right number of dealers. Not too many, not too few.

And we spent a great deal of money, we spent a great deal of time in doing the necessary statistical work, the necessary market research work to provide us with the answer to that problem.

If we have too few dealers we don't sell the volume [fol. 717] of cars that we would like to have.

If we have too many dealers, they either go broke or they go out of the picture.

So we regard the right number of dealers as one of the most important factors with which we have to deal as a manufacturer of motor cars.

Q. What if you have too few dealers, what is the effect on the customer?

A. Well, the customer would have difficulty getting service, No. 1.

He could have some difficulty perhaps in buying cars. He certainly would not have the accessibility of the sales-room or service station in this particular area.

And insofar as we are concerned it would mean less business.

[fol. 718] Q. Well, does less business have any effect on the price which you will have to charge for the car?

A. It certainly does. If we have less business our volume changes drastically and factors are introduced into the picture which would restrict our business or complicate our manufacturing activities and it would have only one result, and that would be to raise the manufacturing cost of our operation.

To the extent that our costs are increased, of course, eventually all costs have to be passed on in the price of the product. So it would have the inevitable result of increasing the price of cars.

Q. So that this use—this dealer's use of discount

houses can ultimately result in increasing the price of cars?

A. I think it could, yes, sir.

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The Court: I take it that the price of cars had not actually increased over the last 25 years, has it?

The Witness: You raise a very interesting question, your Honor.

The Court. What I have in mind is you added on some different new features, did you not?

The Witness: That is right.

[fols. 719-720] The Court: You consider those and take the depreciation of the dollar into consideration at the same time, I wonder if it hasn't been lowered, really.

The Witness: If the price of cars in terms, say, for example, the number of weeks an individual has to work today, very definitely it has lowered the price of cars today.

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[fol. 721] Q. If you have an impairment of your dealer liaison, in connection with your production schedule or in connection with your peaks and valleys, brought on either by economic conditions or by your model changes, or brought on by the unfortunate circumstance of an un-[fol. 722] popular model, does that have any effect on your employment in Detroit and elsewhere?

A. It would have a very serious effect on our employment in Detroit, as well as the serious effect on the employment of the suppliers who work with us very closely in the production of components and materials we need for the production of automobiles.

Q. Now, what effect does that have on the price the consumer has to pay for the car?

A. Well, each change in schedule which would be required, which would give fluctuation to schedules, we can achieve our greatest efficiency with an even schedule. If we have to reduce our schedules, that means then that we, in effect, have to over-man for certain jobs in our plants, and we have to lay off some people.

Under the provisions of—under the provisions under which we operate we today have a very important financial responsibility to our employees, and they have to be compensated for a certain percentage of their normal earnings under reduced workweek procedures.

For example, if it is a short layoff they are paid from a fund which is created by us, and they are paid an amount equal to 65 per cent of their normal earnings.

So, in effect, that would be pay for work, for no productive work being done.

If they are laid off as a result of schedule changes, [fol. 723] for a longer period of time they also can draw upon this fund, plus their unemployment compensation, which would pay them up to 62 per cent of their normal earnings, plus \$1.50 a week for each dependent.

Of course, the unemployment compensation fund is paid by us. We have to contribute to it. To maintain that we maintain this supplemental unemployment benefit compensation fund. So these are direct costs of manufacturing.

If we can maintain steady, even flows of our work, then we don't incur those expenses. Our employees are prosperous, working full time and our business hums.

If we have to be subjected to wide variations in our production schedules again our costs are going to increase, and to the extent they increase eventually they have to find their way into the prices at which we sell our products.

Q. Do you think that the discount house system, whether it be operated by five, ten or forty-three dealers, would increase the price of cars to customers?

A. I think it would very definitely.

Q. Well now, in this case the record shows that you have in the Los Angeles metropolitan area 85 Chevrolet dealers, and it shows that in 1960 there were 23 discount houses selling cars for some of these dealers. So that, in effect, you would have 108 outlets.

Do you think that will sell more cars?

[fol. 724] The Witness: No, sir, I do not. I don't think that it would sell a single additional car. I think if it persisted it would result in the sale of fewer cars.

By Mr. Mitchell:

Q. And if you sell fewer cars what happens to the price of the cars that you do sell?

A. They would be, they would be increased.

Q. Have you had any, over a period of years, Mr. Roche, you and your associates in this company, had any experience with too many outlets, too many dealer outlets?

A. Yes, we have. We have had a great deal of experience with too many outlets in the industry over the years. And it has been a sad experience.

Q. You mean it has an adverse effect?

A. It had a very adverse effect.

Q. Have you had experience with too few outlets?

A. Yes, we have had experience with too few outlets as well, in certain lines and in certain areas.

Q. And do these experiences, what have they caused you to do?

A. They have caused us to bend every effort, to make every effort to endeavor to have the right number of dealers. Not too many and not too few, in the interest of selling the maximum number of cars.

[fol. 725] Q. And in the interest of selling them at the least price that they can be sold for?

A. Selling them in a highly competitive market against very formidable competition.

Q. Now, so far as you are concerned, is it of any moment to you whether discount houses are selling for less or more than dealers?

A. None whatsoever, because our—it is very rarely that automobiles are sold at the suggested list price. The range of prices depends on many different factors. And our dealers have to operate in competition with each other in the same product lines. They operate in competition with other makes of cars in substantially the same price or specification area, with the result that unless they are willing, and do meet competition that exists, they cannot hope to succeed.

The Court: Let me ask you a question. This may be a rather mean and tricky question, so you had better listen to it.

Suppose a discount house were willing to take on the

business and sell every car and guarantee they would sell it at \$1,500.00 above list price. Would you think General Motors would take any steps? They wouldn't bother about it at all, would they?

The Witness: If they would sell all cars at \$1,500.00 [fols. 726-728] above list price?

The Court: Not list price, I mean wholesale price.

The Witness: Selling at \$1,500.00 above wholesale price?

The Court: Yes.

The Witness: Well, I don't think they could do it, your Honor.

The Court: Well, but just assuming that they would agree. Would General Motors—could they do anything?

The Witness: Well, we, of course, could not have any influence whatsoever on the price that they would sell their cars for.

The Court: The trickiness of that question is simply this—what I am getting at is price is the thing you are dealing with here.

The Witness: Price is the thing. Everybody wants to get a good price. And they have the means by which to get a good price on their cars, a competitive price in our franchise system of distribution.

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[fol. 729] By Mr. Mitchell:

Q. Perhaps, Mr. Roche, you explained your views on things, but one more question to see if we can develop for the court what I think he is interested in and what I think he should answer.

If General Motors is not interested in the price at which a discount house or dealer sells his cars, what do you care if dealers use discount houses and if they charge low prices?

A. Well, General Motors has no influence whatsoever with respect to the prices at which our products are sold. We sell our products through our authorized franchised dealers. We sell them to them, rather, and at what prices they may elect to sell those products is a matter for their sole determination.

I think we recognize the economic facts of life in the operation of our business and we know that automobiles are generally, almost always sold at a discounted price from the manufacturer's suggested list price, which, as a matter of law, has to be stated and affixed to each car that we ship.

In the actual market place we expect that our dealers are going to be very competitive. We expect that they are going to meet whatever the competitive situations [fol. 730] are in order to operate their businesses and give us the representation and have a satisfactory business from their standpoint. I think our concern, with respect to the introduction of discount house type operations, has to do with the potential effect of destroying the careful work that we have done in establishing these dealer locations in diluting or diverting some of the market potential, upon which a particular dealer location was established, to other areas or to other dealers who would have absolutely no responsibility or no interest in this particular area.

To the extent that that happened and to the extent that it would result in a sufficient dilution of business, it would cause some of these dealers to give up the business, either voluntarily or perhaps in some cases it might be of sufficient importance to have a more drastic result of bankruptcy.

So our interest again is an attempt to preserve the franchise system of distribution. We are asking for no quarter from the competitive standpoint. We expect to compete. We do compete with our products, our design, with the basic prices at which our cars are listed and at which we sell them to the dealers.

We expect that the dealers in turn then will take those cars to market on as fully a competitive basis as we do. If we have to live with an additional system of distribution [fol. 731], which was never contemplated, which was one that we would not under any circumstances voluntarily establish on our own, then it is our considered opinion that our business would be very drastically affected by reason of the beyond—which would then be beyond our control and would have nothing to do, in my opinion, with the prices at which these cars were sold,

because automobile prices vary from dealer to dealer. They vary, depending upon the circumstances surrounding each individual transaction. There is no uniformity with respect to the pattern. They vary by seasons, they vary by models and many other factors.

So again our concern is the potential dilution of a carefully thought out system of distribution.

Q. When you say "drastic effects," you have described perhaps more than once in your testimony these drastic effects in terms of the effects on your manufacturing and its scheduling, the effect on your goodwill or lack of convenient service and parts, the effect as a result of the peaks and valleys that the business inevitably has to live with, and the effects in terms of an unsuccessful model coming out and other things that you have described, which we will not try to do again.

A. That is right. I think I have described those things that you have mentioned in quite some detail. I think those are the important considerations that motivated [fol. 732] our decision with respect to our merchandising plans over the years and which motivated us to do what we have done in an attempt to preserve that system.

The Court: Well, you have also, if I remember your testimony, indicated in your opinion it would affect—it would have a considerable effect upon the purchasing public, the consumer. Haven't you said that?

The Witness: Yes, I have said that. It would have a very serious effect on the purchasing power of the consuming public.

It would have beyond that, as I have also stated, a very important effect on the general economy of the United States, if we do anything to upset the balance between production and distribution that we have in this very substantial industry of ours.

By Mr. Mitchell:

Q. Were your views in 1960 and 1961 on this subject any different than they are now?

A. No, my views on this particular subject are exactly the same today as they were back in 1960 and 1961.

[fol. 733] Q. What was the first that you heard of the

problem of dealers using discount houses in the Southern California area for the sale of Chevrolets?

A. The first knowledge that I had of this was about the middle of November of 1960, when Mr. Gordon, president of General Motors, referred to me some letters, telegrams and communications that he had received from certain dealers and salesmen in the Southern California area commenting about the discount house operation.

Q. Had you known anything about the discount house problem before that?

A. Not in Southern California, no.

Q. Anywhere else?

A. I had had occasional references to a single automobile being offered for sale through our, or by discount houses in isolated instances during my years with Cadillac.

However, the general comment had to do only with a single specific car, and was no problem of any great moment.

As a matter of fact, up to that time I was of the opinion that these cars that were occasionally discounted by dealers were more of a bootleg variety, where some dealer had sold a car to a discount house, which in turn was offering it for sale to any customer that wanted to buy [fol. 734] it. They are individual cases and never amounted to anything.

Q. Do you think that the sale of a single car, or occasional car to a discount house for resale would wreck the franchise system?

A. Oh, an occasional sale, such as happened—we don't like bootlegging, we don't condone bootlegging, we think it is wrong, we think that it has a bad effect on business.

But one isolated sale, perhaps, would not be too significant.

A regularly organized plan for selling through or channeling customers through a discount house, or any other type of operation beyond the franchise dealer, could have and does have a very serious effect.

Q. Well, now, what did you get from this sheaf of letters that started coming into Mr. Gordon and others in November of 1960 with respect to Chevrolets in Southern California?

A. Well, I judged from these letters that there was a merchandising problem involved which was channeling customers, and which was, in effect, setting up the places through which cars could be bought, Chevrolet cars could be purchased other than the dealer who is there in that particular location, or through other dealers located in [fol. 735] the metropolitan area.

The problem seemed to be a very important one, and one which required some investigation.

Q. What did you do about it?

A. I asked the sales section of the corporation, as part of my responsibility as vice president in charge of distribution, and I asked some of the members of my staff, central office staff, to make an investigation and advise me as to what was going on.

Q. What were the names of those persons that you mentioned talking to?

A. I talked to Mr. Crawford, who is director of the sales section, and Mr. Schreitmueller, who is organization manager under Mr. Crawford's supervision.

Q. And did they report back to you?

A. Yes, they did. They reported back to me after their investigation had been completed and advised me as to the reports that they had been able to get from the field organization as to what was going on.

Q. With whom did you discuss this problem, other than Mr. Crawford and Mr. Schreitmueller?

A. At various times we discussed the problem with Mr. Schreitmueller, Mr. Crawford discussed it with Mr. Gordon, discussed it with Mr. Averill of Chevrolet, Mr. Mays of Chevrolet, and with our legal department, Mr. Bridenstine. [fol. 736]

Q. Mr. Bridenstine?

A. Yes.

Q. Did you reach any conclusion as a result of these discussions?

A. Yes. Eventually, as the result of the discussions, we reached the conclusion that a serious problem existed, and that the nature of the problem threatened our distribution plan—indeed threatened, in my opinion, the very existence of our franchise system of distribution. And that if it continued it would have a very adverse effect

upon the sale of Chevrolet cars and trucks, parts, and other products, as well as reflect adversely on the good name of Chevrolet. And would also tend to destroy the service and parts facilities which are required to keep Chevrolet cars in operation.

[fol. 737] Q. Did you have complaints from any dealers in Southern California other than Chevrolet dealers?

A. Each of our divisions, I think,—personally I did not, but I am familiar with some of the telegrams and letters which our other divisions received from other corporation dealers and salesmen in the area, who also shared the concern of the Chevrolet organization.

Q. In reaching your conclusion as to the fact there was a problem and in determining what to do with the problem, did you consult with any Chevrolet dealers or any other dealers, for that matter?

A. No, sir, we consulted with no dealers and no one outside of our own organization.

Q. Did you consult with any dealer associations?

A. No, we did not consult with any dealer associations.

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[fol. 738] The Court: By "dealers" you mean your own dealers?

The Witness: Yes, sir.

The Court: I wasn't too sure he meant that.

I mean your own Chevrolet dealers.

The Witness: That is right.

The Court: You didn't consult with them?

The Witness: That is correct. I didn't consult with anybody except our own people.

By Mr. Mitchell:

Q. With Cadillac, Pontiac, Buick, Oldsmobile dealers?

A. No, no dealers; had no dealer contacts.

Q. For that matter, did you consult with anybody outside of your own group you have told me about?

A. I have described the group with which we have consulted. In addition, we, of course, talked with some of the other executives of General Motors, particularly the members of the distribution policy group at a later occasion.

But our discussions and our handling of the problem was discussed and handled by these people that I have mentioned.

Q. At that time did you know there was such a corporation as Losor Dealers Association?

[fol. 739] A. I was not familiar with the name "Losor Dealers Association" and it was some time later that I first heard the name of this dealers association.

There are many dealer associations across the country. There are city-dealer associations, metropolitan dealer associations, state dealer associations, county dealer associations, national dealer associations. And then it is the common practice for dealers of the same make to have an association.

So there are so many of them that obviously I could not hope to keep up with the names of all of them. So I was not familiar with the Losor, the name Losor Dealers Association.

Q. Or did you know who composed the association?

A. I had no idea whatsoever of who composed that association.

Q. Is the same true as to the Foothill Dealers Association?

A. That is correct.

Q. Is the same true as to Dealers' Service, Incorporated?

A. That is right.

Q. What decision was reached by this group that you spoke with? What did they decide to do about this problem?

The Court: I take it this group—hereafter you will [fol. 740] refer to it as the executives of General Motors, is that right?

Mr. Mitchell: By this group I mean Mr. Crawford, Mr. Schreitmuller, Mr. Averill, Mr. Mays, and Mr. Bridenstine.

The Witness: If I might suggest, we might refer to this as a working group, to identify it.

The Court: What I am trying to get clear in my mind is that they were General Motors executives?

The Witness: That is right. These were General Mo-

tors executives who were concerned with the handling of this problem, the recommended handling of the problem.

By Mr. Mitchell:

Q. All right. As a result of the discussions with this working group, what was it decided to do?

A. Well, it was the unanimous opinion of the members of the group that we were confronted with a very serious situation and something had to be done about it.

The decision was eventually reached that we should prepare a letter in which we would state our position and our thinking with respect to this problem, so that all dealers would very clearly understand what we thought, the reasons why we thought as we did, and to state to them that we regarded this matter as a threat to the franchise system of distribution and there were serious questions involved with respect to possible violations of our selling agreement.

[fol. 741] We wanted to urge them to give this matter careful consideration and then to judge their particular activities in the light of their responsibilities.

During the course of the preparation of the letter all of these points were very carefully considered, and also it was decided that we would recommend that a similar letter be sent to every General Motors dealer in the United States, so that there would be no question as to the importance that we attached to this problem.

Q. Now, was here any decision made with respect to personal conferences with the Chevrolet dealers in the Southern California area?

A. No, there were no conferences whatsoever with Chevrolet dealers.

Q. In preparing your letter, there is an instruction or a statement that the dealers will be called upon in connection with this problem. Do you recall that?

A. That is right, I recall that very well.

Q. Was there a decision made as to having your local zone and regional offices do something about this letter that you were going to send out?

A. Yes, we wanted our zone and regional personnel to sit down and discuss this matter with the dealers in the area involved, so that there would be a very clear under-

standing of our attitude and our viewpoint, so that if the [fol. 742] dealer had read the letter he would know what we meant and if he had any further questions or anything he wanted to discuss, that would provide an opportunity for him to do so.

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[fol. 743] Q. As you proceeded in reaching this—proceeded with your working group in reaching this decision, had you consulted at all with Mr. Gordon?

A. Yes, I continued with Mr. Gordon and made progress reports to him regarding the tenor of our discussions, the trend of the think that we were following, so that he would be kept abreast of it and could give us the benefit of his constructive criticism with respect to what we were doing.

Q. Well, now, what was the plan with respect to this letter that was drafted?

A. The plan with respect to the letter that was drafted was that the letters from—addressed to Mr. Gordon by dealers would be acknowledged by me.

And that the letters, or telegrams that were received from salesmen would also be acknowledged through the medium of this letter a request to the dealers to make such acknowledgement to his salesmen.

It was also decided that the letters addressed to Chevrolet personnel would be acknowledge by that division and Mr. Staley, who would refer to the letter which I was sending out, and quote that letter in his reply.

Q. Now, before putting this plan into effect, did you secure any approval from Mr. Gordon?

[fol. 744] A. Yes, I did. I reviewed the letter with Mr. Gordon, and we had his approval before it was sent out.

Q. Government's Exhibit 185 are some notes or minutes of a distribution policy group meeting on December 21st, I believe.

Will you tell us what the distribution policy group is?

A. The distribution policy group consists of members of the executive committee of General Motors, plus the vice presidents in charge of distribution, and the directors of the sales sections.

At that time I was chairman of the distribution policy group. This is a regularly constituted group which deals with the problems in the distribution, sales and service area.

The group meets regularly each month, usually on the third Tuesday of each month.

It is common practice for us to keep the members of this group, who are the top operating executives of General Motors Corporation, as familiar as we can and abreast of current developments in the distribution area.

This letter, after it had been sent out, it was decided to review the contents of this with the distribution policy group at its regularly scheduled meeting on December 21st; and at that time to pursue the thought that we had [fol. 745] from the beginning, which was to send this letter to all General Motors dealers.

We wanted all the members of the distribution policy group to be familiar with the contents of the letter. So it was presented in slide form at this meeting.

The Court: You say all dealers, meaning what?

The Witness: All General Motors passenger car dealers, Chevrolet, Cadillac, Buick, Olds and Pontiac dealers.

The Court: You mean throughout the entire United States?

The Witness: Throughout the entire United States, your Honor, yes, sir. There are some 15,000 General Motors passenger car dealers.

So the letter was presented. It was reviewed. And the proposal was presented that it be sent to all of the dealers.

The proposal was unanimously approved by the members of the distribution policy group and the letter was distributed, mailed to all General Motors dealers during late December 1960.

The Court: Excuse me, Mr. Mitchell. I believe this letter is addressed to General Sales Managers, is that the one?

Mr. Mitchell: Well, your Honor—

[fol. 746] The Court: 116, Exhibit 116?

Mr. Mitchell: There are numerous copies of this letter identical in the record. The one you have, your Honor—

The Court: I take it, what I am getting at, I take

there is no dispute in the case that this letter went out to all of the dealers throughout America? Is there any dispute, Mr. Blecher, about that?

Mr. Blecher: Not 116, your Honor. The letters are form—they are substantially identical with 121, which was sent out to all dealers throughout the United States, I mean in each instance by the general sales manager in the particular division.

The Court: Well, what I am getting at is, to try to be sure that I understand, and that is that this letter that dealt with this problem—and I have before me Exhibit 116, and that is the letter that deals with it, as I remember it, it did go out.

The Witness: Yes.

Mr. Blecher: Your Honor——

The Court: Not just to Southern California dealers, but to all the dealers throughout the United States.

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[fol. 747] Mr. Mitchell: That's right. But as these letters went out to the Pontiac dealers, it would be signed by the sales manager of Pontiac, is that not right?

The Witness: Mr. Bridges, that's right.

By Mr. Mitchell:

Q. And similarly with respect to the letters going to [fol. 748] the other divisions, they would be signed by the general sales manager of that division?

A. The general sales manager of each division signed the letter which went to dealers in other areas, or sections.

Q. And the record here, General Motors Exhibit AV shows that you sent out an interorganizational letter dated December 12, 1960, to each of the car divisions, directing them to send out this letter. You recall that?

A. I recall the letter. I don't recall the exact date, but I recall the letter, yes.

[fol. 749] Q. Why didn't General Motors order its dealers to cease selling through discount houses under penalty of revoking their franchises?

A. I think to understand the reason for that you would have to know how we in General Motors attempt to

operate with our dealers. It is not our practice to threaten dealers with termination of their franchise. There are many areas in which perhaps there would be questionable discharge of responsibilities under the terms of our selling agreement with the dealers.

There may be many areas in which we would like to bring about a correction. It might be for sales performance, it might be for facilities, it might be inadequate service or poor management; any one of a number of reasons.

It is our policy to attempt to work with our dealers on the basis of reason or reasonable approach, a cooperative approach, and through persuasion to bring the dealers around to our point of view.

We spend a lot of time, we make a great deal of effort to work with our people, encourage our employees to work with our dealers on this kind of a basis.

Now, failing over a period of time to accomplish whatever purpose we might have in mind, with respect to the discharge of the responsibilities under the provisions of our selling agreement, termination might eventually be [fol. 750] come the answer to it. But that would be, in most cases, the last resort.

We viewed this problem in the same light. Certainly, we would not want our people to go in and wave the franchise agreement, selling agreement, and threaten the dealer with termination in the event he didn't agree, after following—after reading a letter he was violating our agreement and should change his practice.

Instead we expected that this would be handled on a sound, calm, sensible business-like approach.

Q. Why did General Motors adopt the policy that it did adopt with respect to dealers' use of discount houses?

A. We adopted it for only one reason. We felt that it would have a very serious and detrimental effect on the operation of General Motors Corporation, and that it eventually would seriously affect the sale of Chevrolet cars and possibly other General Motors products, in the event that the practice was taken up extensively among the other lines—

Q. Taken up how among the other lines?

A. Extensively.

Q. Extensively.

A. —among the other lines, and if it did we felt this would destroy the very carefully planned and constructive system of distribution that we had worked for so many [fol. 751] years to establish, and in which we had such a very substantial investment of time, effort and money, to bring our operation to the degree of success that we enjoy today.

We felt that if this thing persisted that it would have the inevitable result of making our operations in General Motors, in Chevrolet and the other divisions that might be affected, much less successful than it is and has been.

Q. You were acting in General Motors' own interest?

A. Solely in General Motors' own interests.

Q. Were you engaged in a combination, conspiracy or concert of action with any Chevrolet dealer or dealers in Southern California or any Chevrolet dealer association in Southern California?

Mr. Blecher: Let me object to that, your Honor, on the ground it calls for a conclusion of this witness which this court will be required to make.

Moreover, whether or not General Motors participated in a combination and conspiracy is to be judged by what they did and not by what they said.

The Court: Well, you certainly are not contending—if you are going to take the position what they said is not relevant, then I will have to throw out all these letters.

Mr. Blecher: I am taking the position, your Honor, he [fol. 752] is not permitted to make a self-serving statement as to—

The Court: In this court they can always make a self-serving declaration. I am never going to change that.

Since I was a prosecutor back in 1933 I never ever made that objection.

I am going to permit it. After all, he is making a denial of guilt, is what he is doing, and that is what I am permitting.

I don't have to accept it and I may not accept it.

I am certainly going to give every defendant an opportunity in a civil or criminal case to say, "I didn't do it."

The Witness: Thank you, your Honor.

That is exactly what I am saying, "I didn't do it."

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[fols. 753-754] Q. You mean you did not engage in a combination or concert of action with the people I asked you about?

A. We did not engage in any conspiracy or concert of action with the people which you are speaking about.

The Court: I take it what he is really saying is that—go ahead. I won't ask that.

Mr. Mitchell: He said it. That is all.

The Court: Well, what I understand you to say is simply that you deny from this witness stand that you ever intended at any time or from anything you saw that General Motors intended to form a combination or a conspiracy or a concert of action or a plan with these dealers to bring about this result, is that what you are saying?

The Witness: That is exactly right, your Honor.

By Mr. Mitchell:

Q. Or with the dealer associations or any of them.

A. Or with the dealer associations or any of them.

Q. You deny it.

A. I deny it absolutely.

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[fol. 755] Cross-examination.

By Mr. Blecher:

Q. Mr. Roche, is it your judgment that, all factors remaining equal, a consumer would prefer to purchase a car from a franchised Chevrolet dealer, as opposed to some non-franchised source?

A. Yes, it is.

Q. On what do you base that judgment, sir?

A. I base that judgment on the fact that an established dealer, as the authorized representative of the manufacturer, a business which has been set up for the purpose of serving customers for that particular line of cars, both in selling them new cars and providing service facilities required to maintain those cars, has been an established system of distribution since the inception of the industry.

And I think that is by far the preferred method on the

part of most people in purchasing their automotive transportation.

[fols. 756-757] Q. What factors do you think, Mr. Roche, compel a customer to do business with a non-franchised source?

A. There could be perhaps several factors. One—one might be that he wanted a particular car, but in the past he might have had some difference of opinion with a particular dealer who was selling that car.

In other cases he might feel that he was closer to the particular individual who might be operating such a business.

I suppose it could be any one of a number of factors.

[fol. 758] Q. Mr. Roche, do you believe that the mere existence of discount houses threatens the destruction of the franchise system?

A. I think the existence of discount houses through which our products can be sold threatens the franchise system, yes.

Q. Regardless of the number of cars that are sold by those discount houses?

A. Well, it obviously would depend on the number perhaps. A casual sale, such as occasionally happens with a used-car dealer, perhaps wouldn't be of any great significance. A regular system for providing for a flow of cars through a discount house location would have a very serious effect, yes.

Q. In your judgment, Mr. Roche, what number of cars would have to be sold through discount houses in the Los Angeles area before there was any serious impairment of the franchise system, as you have described it?

A. I could not define such a number without a very detailed study of the over-all market and the circumstances under which the operation would be carried on.

Q. Do you know, Mr. Roche, approximately how many cars were sold through discount houses—Chevrolets were sold through discount houses in the year 1960?

[fol. 759] A. I don't know exactly, no. It is my impression that there were several thousands, but I can't vouch for that.

Q. Do you know what relation that several thousands bear to the total number of Chevrolets sold in the Los Angeles area in 1960?

A. I don't have the exact figures. I would say it was a reasonably small percentage.

Q. About two per cent, Mr. Roche?

A. Between two and five per cent perhaps.

Q. Now, during that time, 1960, when about two to five per cent of the cars were sold through discount houses in the Los Angeles area, what impairment, if any, did you observe in connection with your franchise system?

A. I didn't observe any impairment in the franchise system at that time. I think this is sort of like waiting for the disease to kill the patient before we decide what is wrong with him.

Q. Do I understand from your answer, Mr. Roche, you contemplated that upon check the discount house distribution, that is, the sale of Chevrolets by dealers through discount houses, would continue to flourish and increase?

A. We were concerned this problem would spread and if it did continue on this basis and if it did increase, that it provided a very serious threat to our system of distribution [fol. 760] and our interest in the Los Angeles market.

Q. Why did you think it was going to increase, Mr. Roche?

A. Well, it had gone from nothing to this volume in a comparatively short period of time and we had every reason to believe it was probably going to increase.

[fol. 761] Q. Well, why do you think that it had gone from nothing to something in a comparatively short period of time?

A. I can't answer that question.

Q. Did you make any observation on that subject at all?

A. No, except that there was—it was a different system of distribution. And my first knowledge of this came with the advent of the letters and the telegrams that we received from dealers, which were referred to me for handling.

Q. Now, is it not a fact, Mr. Roche, that virtually every letter which you observed, or every telegram that you observed sent by a dealer or a salesman in the Los Angeles area complained about the nature of the price competition being caused by dealers selling through discount houses?

A. I can't give you the number. Some of them did comment on that, yes.

Q. The fact is that a large number did, did they not, Mr. Roche?

A. Many of them did. I can't give you the percentage of the ones that did.

Q. Did you cause any investigation to be made in or about November of 1960 to determine whether or not [fol. 762] Chevrolet dealers selling through discount houses were selling cars at lower prices than the dealers in the area in which the discount houses were located?

A. No, we did not.

Q. Did you——

A. Because the price was not a matter for our consideration.

Q. Did you consider the price at which these automobiles were being sold through discount houses wholly irrelevant to the subject?

A. Well, price is not irrelevant to the sale of a car by anybody, whether it is a discount house or a franchised dealer. Price is a very important factor in the sale of a motor car.

Q. Is it not a fact, Mr. Roche, that back in November 1960 the folks at Chevrolet recognized that this system would continue to increase only because the discount house outlets were being furnished cars at low prices?

A. I can't answer what the people at Chevrolet might think, or the individuals out here who were in a position to observe what was going on.

But I would imagine that they would be fully cognizant of the competitive nature of our business, and the prices, and the fact that Chevrolets were being sold at varying prices, depending on the dealer, the location, the season [fol. 763] of the year, the type of the car, the model, or whatever else may have been involved in it.

Q. Did you, during the period around November of 1960, did you ever have occasion to discuss the matter, discuss the nature of the complaints coming from the Los Angeles area with Mr. Kenneth Staley?

A. No, I did not discuss it with Mr. Kenneth Staley.

Q. Did you have occasion——

A. At that time.

Q. I am sorry. Did you have occasion to discuss the subject matter of these complaints with Mr. L. N. Mays?

A. No, I did not, not at that time.

Q. Mr. Sidney Gilliatt?

A. Shortly after that I did, yes—no, not with Mr. Gilliatt either at that time.

Q. You did discuss the subject with Mr. Mays, however?

A. The subject, yes. These letters came in about mid-November and were referred to me, as I testified this morning, by Mr. Gordon.

I talked with the people on my staff, distribution staff at the time, and turned the letters over to them for investigation as to what happened.

They reported back to me the results of their findings. [fol. 764] Q. Well, do you know, Mr. Roche, as you sit here now, what part Mr. Gilliatt, Mr. Mays and Mr. Staley played in the formation of a policy in connection with discount house sales in Southern California?

A. Well, Mr. Gilliatt and Mr. Mays were working with the people on my staff, endeavoring to determine exactly as they could what was going on, and to develop a proposed letter and reply, based on our policy position, that we could take with these dealers.

That is the extent of my knowledge of their participation in it.

Q. Do you know whether or not Mr. Gilliatt and Mr. Mays were assigned the task of collecting the facts and analyzing them as they applied to the sale of cars through discount houses in Southern California?

A. I think they worked in that direction, yes, sir.

Mr. Blecher: Mr. Clerk, may I ask for Government's Exhibit 114, please?

(The exhibit was placed before the witness.)

Mr. Blecher: May I approach the witness, your Honor?

The Court: Yes, you may at all times. The only rule I require, counsel, is that any lawyer not stand so close to the witness that he is shouting in his ear. I can't tolerate [fol. 765] it for myself and I am sure other people can't.

But you can stand by him if you need to at any time.

By Mr. Blecher:

Q. Mr. Roche, I hand you the document which is marked Government's Exhibit 114, and ask you whether or not you will examine that document and tell me whether you have ever seen it before?

A. Yes, I have seen this document before.

Q. Did you see this document, sir, at or about the time it was prepared in December, 1960?

A. Yes, I saw it shortly after that, or approximately this time, yes.

Q. Let me invite your attention, if I may, Mr. Roche, to the third page of that exhibit, and further direct your attention if I may to the paragraph next to the bottom of the page which reads:

“It would appear that one of the real hazards of condoning this type of operation is that discounted prices are freely quoted to a large portion of the public.”

Now, Mr. Roche, did you agree with that statement at the time Mr. Gilliatt made it in or about December of 1960?

[fol. 766] A. I can't recall that I paid any particular attention to that particular statement at that time—

Q. Can you—excuse me.

A. Pardon me. I was just going to add that this is perhaps Mr. Gilliatt's opinion. But that would not be controlling or binding upon me, or anybody else.

Q. Well, isn't it a fact, Mr. Roche, then, that one of the hazards of condoning the sale of Chevrolets by dealers through discount houses was that discounted prices were being freely quoted to a large portion of the public? Wasn't that really the heart of the problem?

A. I don't think so, Mr. Blecher, because I think discounted houses—discounted prices are very freely quoted to the public, both by franchise dealers and, in many instances, through advertisements which appear in the public press.

So I don't think there is anything very unusual about quoting discounted prices on automobiles.

Q. I take it that it is your testimony that there is no hazard involved by Chevrolet dealers selling cars through discount houses at large discounts?

A. There is no more hazard with respect to the price problem in that area than there is with the normal competition which exists between Chevrolet dealers and other competitive dealers, in my opinion.

[fol. 767] Q. At the time this problem first came to your attention, Mr. Roche, in or about November 1960, you recognized, did you not, that there was a very serious problem involved in relation to the federal antitrust laws, did you not?

A. Yes, sir, we are very conscious of our problems in connection with the federal antitrust laws.

Q. And that subject was discussed among the folks you mentioned this morning, as having participated in a policy and program by General Motors?

A. I am sure that it was, because there would be nothing unusual about that. All of the policies that we formulate and all of the policies that we develop, we do so with a very important consideration that all of our activities conform with the existing laws as we interpret them, so there would be nothing unusual in this case, any more than in any other activity we might undertake.

Q. May I invite your attention, Mr. Roche, to page 4 of the document before you now, and to the fourth paragraph on the page which reads:

"The activities of these discount houses have been the subject of review by Chevrolet, as well as the sales section and legal staff of the General Motors Corporation, and is a very delicate matter, inasmuch as it would appear at the outset there is very little legally [fol. 768] that Chevrolet or the corporation can do relative to referral agreements which dealers may have with certain individuals."

Is it not a fact, Mr. Roche, that at the time you formulated this policy that you recognized that it would be a violation of the law for you to take any steps to interfere with the relations your dealers may have had with third parties by way of referral agreements?

A. No, sir, it is not.

Q. Would you say that Mr. Gilliatt's statement here is in error?

A. I think you would have to ask Mr. Gilliatt the question as to his own interpretation of this. This is merely an expression of opinion on the part of Mr. Gilliatt. This certainly does not coincide with my opinion with respect to our discussions with the legal department.

The Court: What was his position, Gilliatt?

Mr. Blecher: In the stipulation, your Honor, it is recited he was the head of the dealer organization and analysis department of Chevrolet at that time.

The Court: Where was he located, Detroit or out here?

Mr. Blecher: Detroit.

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[fols. 769-770] By Mr. Blecher:

Q. Mr. Gilliatt was, in fact, Mr. Roche,—

The Court: He started to say something.

The Witness: I was just going to say that Mr. Gilliatt worked in the sales department of Chevrolet, your Honor.

By Mr. Blecher:

Q. Mr. Gilliatt was one of the persons in Chevrolet that was active in putting into effect the policy announced by General Motors, was he not?

A. He was one of the persons engaged in developing the information which was used by us in formulating the policy position that we took on it.

Mr. Gilliatt's primary role was to develop the information as to what was going on. The policy formation was beyond his jurisdiction.

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[fol. 771] Q. Mr. Roche, let me hand you a document marked Government's Exhibit 232, which is the year-end financial statement of Cone Bros. Chevrolet of Anaheim.

Is that the financial statement you were talking about?

[fol. 772] A. This is the type of financial statement I was talking about, yes.

Q. Will you tell me, Mr. Roche, how you can determine from that financial statement the approximate prices at which dealers were selling cars?

A. Yes. The accounting system provides that the cars, that sales of cars will be recorded at the list price at which they are sold, and that any discounts which are given from that list price will be recorded as a separate item.

Those items are identified in the financial statement

through the medium of separate accounts. That is the principal method for determining, on the average, what these cars are being sold for.

Q. How would you do that specifically in the case of Cone Bros. Chevrolet?

A. Well, in the case of Cone Bros. Chevrolet, this particular statement, for example, shows the sale of 540 cars, passenger cars.

It shows the dollar sales volume and it shows the discount that has been given.

This particular statement shows 540 unit sales with a discount of \$175,000.00, which is an average of some three hundred or so dollars per car.

[fol. 773] Q. At the time of the events in question in November 1960, did you undertake such analysis with respect to the dealers who were complaining about the sale of Chevrolets through discount houses?

A. No, we did not undertake such an analysis at that time, because, as I have indicated before, we had no concern about the fact that our prices are competitive. We feel that the prices for which Chevrolet products are being sold are very competitive in the market in which we operate or we wouldn't get the business.

We were concerned primarily with the establishment of another channel of distribution which we felt would have the effect of diluting the volume of business for—in the areas in which the discount houses were operating versus the established dealer locations which we had set up only after long and careful study as to the requirements for a dealership in that area.

[fol. 774] Q. How would you anticipate, Mr. Roche, that the dealers selling through discount houses would dilute the opportunity of neighboring dealers to sell cars, unless the dealers selling through discount houses were competitive?

A. Well, as I said before, we expect our dealers will be competitive. And if they are not competitive in a particular area, I think that the other dealers in the metropolitan territory would see to it that they were either competitive, or some of the other established dealers would get the business.

I don't think we need discount houses to help us solve that problem.

Q. Well, isn't that, in fact, what happened here, Mr. Roche, that some of the city dealers were getting down into Orange County and selling at prices there that were below the prices generally being charged by the Orange County dealers?

A. I can't answer that question. I think we would have to look at individual dealers to get an answer to that particular question.

Every dealer sells cars at different prices. No dealer sells cars at the same price. There are many factors involved in establishing the price of a car, particularly where there is a trade-in involved.

Q. Well, as you sit here now then you don't really know [fol. 775] whether or not the sale of cars by dealers through discount houses, for example, generated vigorous price competition in the Orange County area?

A. I think that we have a lot of price competition generated by the Chevrolet dealers in the metropolitan Los Angeles area.

And we have established a network of dealers in this area which we feel will give us good representation in a highly competitive market, a highly competitive industry in a highly competitive market, and that we don't need, and can't support additional channels of distribution.

If we felt additional dealerships, if we felt that additional outlets would sell more Chevrolet cars, more General Motors cars, we would put them in. I don't think we need the help of any of our dealers to do it.

Q. I appreciate all of that, Mr. Roche. But what I am asking you now is whether you know, or knew in or about November, 1960, whether the dealers who were selling cars through discount houses in the Orange County area were, in fact, creating, down in that area, vigorous price competition? Do you know or don't you?

A. I am not familiar with the specific prices at which cars were sold in the Orange County area in November of 1960.

[fol. 776] Q. But you do know, don't you, Mr. Roche, that that is precisely what the dealers in Orange County who wrote you and Mr. Gordon letters were complaining about, don't you?

A. Frankly, that doesn't bother us, Mr. Blecher.

The Court: No, he asked you if you know that that was correct, that was one of the things, I take it, they complained about.

The Witness: I have already admitted—said that, yes, that many of the letters did make that statement. But it was not part of our consideration in formulating and developing the letter which expressed our policy to those dealers.

By Mr. Blecher:

Q. Now, if you recognized that the dealers were complaining about vigorous price competition, Mr. Roche, didn't you expect that if you took steps to correct that, that you would, in fact, be effecting price competition among your dealers in the Los Angeles area?

A. No, no, we didn't, because we had enough other dealers so that there was a very competitive atmosphere with respect to prices and to sales competition in this area.

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[fol. 777] Q. Now, yesterday, Mr. Roche, you looked at the map which is a General Motors Exhibit, and you discussed dealer No. 21, who was involved in a flanking movement—

The Court: Let's refer to the exhibit, so that when you get up on appeal the court over there will know what you are talking about, and won't have to go back and look for it. What are you talking about?

Mr. Blecher: Yes, sir. This is General Motors Exhibit No. A.

Q. Mr. Roche, yesterday you were talking about dealer No. 21, who is Cone Bros. Chevrolet in Anaheim, is it not?

A. I think it is, yes.

Q. And we discussed the fact that there were about three discount houses, or more, in very close proximity to his dealership.

A. That is correct.

[fols. 778-779] Q. And you testified that a fellow in those circumstances might have a difficult time surviving in the face of that kind of competition, didn't you?

A. Yes, I did.

Q. Now, will you take a look at Mr. Cone's financial statement?

A. Yes.

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[fol. 780] Q. Can you state for the record how many new cars and trucks Cone Bros. Chevrolet of Anaheim sold in the year 1960?

A. They sold a total of 593 new passenger cars and trucks.

Q. Do you know, Mr. Roche, where that placed him, in terms of position among all of the dealers in the Los Angeles metropolitan area in terms of volume?

A. No, I do not.

[fol. 781] Q. Will you examine the profitability of that dealership and tell me whether or not you think it shows a due regard for your dealers, as an adequate rate of return?

The Court: First let me know what the net profit was. What does it show?

Mr. Blecher: I specifically avoided that in deference to the objection it be not exposed. I am perfectly willing to have it stated for the record.

The Court: I don't know how—

The Witness: I don't know how—

The Court: I don't know how he can answer it or I can pass on it.

Mr. Blecher: I appreciate that.

Q. Will you state for us what the profit or loss of that dealership was in that year?

A. The profit here was \$38,700.00.

The Court: What was that, before or after taxes?

The Witness: After taxes.

By Mr. Blecher:

Q. What was it before taxes, Mr. Roche?

A. Well, that depends, of course, on how you interpret it. Based on the interpretation you placed on it and the line you pointed out, it was \$90,000.00.

The Court: That means net profit before all taxes?

[fol. 782] The Witness: Yes, sir, except real estate taxes or—

Mr. Blecher: And bonuses.

Mr. Mitchell: And bonuses.

The Witness: Before taxes and bonuses, yes. Bonuses, of course, which is a cost of doing business; bonuses to employees.

The Court: Yes.

The Witness: And this resulted in a profit of \$38,700.00.

By Mr. Blecher:

Q. On what sort of investment?

A. On an investment of \$576,000.00.

Q. How does that compare with your dealers nationally, as a whole?

A. I would say it is on the low side. I can't give you the exact figures. It is a little low.

Q. Are you able to trace whether or not on the basis of that statement the sale of Chevrolets through the four or five discount houses in the Anaheim area had any serious effect on Cone Bros.'s ability to make a profit?

A. I would be unable to trace that at this distance. I would suspect that it probably didn't have too much effect on his profit at this particular time, in view of the limited number of cars that were sold during that period.

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[fol. 783] Q. Now, what sort of increase in the number of cars being sold through discount houses in the Orange [fol. 784] County area, Mr. Roche, would you contemplate would cause any serious effect on Cone Bros. Chevrolet or Cone Chevrolet Company?

A. I don't think I would be prepared to answer that; Mr. Blecher. I would not have any opinion on that.

Q. Do you know what sort of effect on the ability to retain gross profits of either of those dealerships would be necessary in order to cause any serious difficulty with either of those companies?

A. Well, again that could be determined only on the basis of examining in considerable detail the actual operating factors in the particular company.

Based on the over-all results of our dealerships, we know

that we operate at very close margins in our business and it doesn't take too much diversion of business from one source to another, from one dealer to another, or from one make of car to another, to have very important repercussions in the profit position of a particular dealership. That can be determined only on the basis of an analysis of the individual facts.

Q. Mr. Roche, you spoke during—at great length during your direct examination about certain benefits that General Motors derived by reason of its franchise system and how, in your judgment, the sales through discount houses tended to affect that system.

A. That is right.

[fol. 785] Q. Isn't it a fact, Mr. Roche, the very same effect would be created by Citizen Chevrolet coming down to Orange County and selling in Orange County at the same prices it was selling in Eagle Rock?

A. That is right, but I think we have to face up realistically to the facts of life. That is one of the hazards any Chevrolet dealer expects to encounter when he takes a Chevrolet franchise. He knows he is going to be operating in a metropolitan area in competition with many other dealers who are handling exactly the same product that he is, and if he is unwilling to do that, then the chances are he would not be a Chevrolet dealer.

Q. Did you recognize that that sort of situation was precisely what the dealers were complaining about in about November of 1960?

A. No, that wasn't the type of situation they were complaining about at all. The dealers had a selling agreement with us that prevented them from establishing any other location or any other outlets through which they could sell Chevrolet products, and I suppose that that is what they were concerned about. That here beyond their control or beyond our control were additional outlets being set up to engage in the sale of Chevrolet cars without the responsibilities, without any of the responsibilities that go with a Chevrolet selling agreement.

[fol. 786] Q. Did you think it was probable they would be complaining if the dealers selling through discount houses were not charging prices that stimulated price competition in their particular area?

A. I think the same situation would prevail, yes.

Q. They would complain, without respect to the prices, the dealers were selling to discount houses, is that your judgment?

A. That is my judgment. I think a Chevrolet dealer would have every right, as would any other General Motors dealer, to complain about the establishment of any other location which was not in accordance with the provisions of our selling agreement.

Even we in General Motors do not appoint other dealers without giving our existing dealer organization advance notice, and I am sure that they would expect that they would have some grounds for complaint, in the event outlets were set up through discount houses, as they were.

Q. Mr. Roche, is the Ford system of distribution substantially similar to that used by General Motors?

A. To my knowledge it is quite comparable. I am not qualified to speak on Ford problems. But to my knowledge they operate also under the franchise system of distribution.

Q. In fact, all the domestic manufacturers use a franchise system, do they not?

A. Yes, they do.

[fols. 787-789] Q. Did you observe what has happened to their franchise system in the Los Angeles area since 1960?

A. No, I am not familiar with what has happened to the Ford system of distribution in this area, or in other areas.

Our concern, of course, is what happens to the General Motors franchise system of distribution. That is the one with which we are directly concerned, and that is the one we try to follow to the best of our ability.

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[fol. 790] Q. Well, do you think leasing companies have an effect similar to discount houses in that they take potential purchasers out of the market and dilute the market for dealers?

A. If it were carried to the extreme, I would think that it could accomplish the same objective, yes.

Q. Has General Motors issued any policy statement encouraging or discouraging dealers doing business with leasing companies?

A. No. But we have a system for doing business with recognized leasing companies. And we sell a lot of cars to leasing companies.

As I explained earlier, we sell many individuals, many important industries, companies, lease cars. And they [fol. 791] lease them in very large numbers.

And some of our dealers are in the leasing business.

So it is not a strange field, and there may be certain abuses in the leasing field, the same as there is in other business enterprises, perhaps. But if there is anything affecting the distribution of automobiles, such as additional outlets, I am not aware of it.

The Court: Well, the thing that concerns me about this line of questioning is the fact that you drive an automobile around the corner and it is a second-hand car. So you are not dealing with new cars at all.

The Witness: That's right.

The Court: Isn't that correct?

The Witness: That's right, your Honor. The minute the car, the title passes to an individual's name it becomes a used car.

The Court: So if you lease a car, counsel, and drive it around the block it is second-hand, isn't that right?

Mr. Blecher: That's right, but the point was that a leasing company, in effect, takes purchases out of the market every time they lease a new car.

The Court: Oh, I see.

Mr. Blecher: It has the same effect as—

[fol. 792] The Court: Oh, I see, as the discount houses. I see. I didn't catch your point.

I don't think General Motors is trying to stop the leasing business.

The Witness: Definitely not. We couldn't if we wanted to, and we wouldn't do it because there are many good and valid reasons for leasing, not only automobiles but trucks, and many other items of equipment.

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[fol. 793] By Mr. Blecher:

Q. Mr. Roche, let me hand you a copy of a document marked Government's Exhibit 7.

The Court: What is that, counsel?

[fol. 794] Mr. Blecher: That is a memorandum from Mr. Averill to Mr. Roche, dated November 18, 1960, which attaches a copy of a letter from a dealer named John Connell in Newport Beach, dated November 11, 1960.

The Court: Thank you.

By Mr. Blecher:

Q. You testified this morning, in effect, you were not aware—as I recall your testimony—of any contact between General Motors and dealer organizations, is that correct, Mr. Roche?

A. Yes; yes.

Q. Let me invite your attention to the attachment to the memorandum Mr. Averill wrote you, that is, the letter of Mr. Connell, in particular to the paragraph at the bottom of page 2—or the middle of page 2, which reads:

“The local dealer group is already working on this thing through Mr. O'Connor and no doubt will be brought to your attention soon.”

Now, you recall reading that letter from Mr. Connell at the time Mr. Averill sent it along to you?

A. I don't know whether I have read it—I have read the letter, yes. I am not sure I read it at this time, because this letter is dated November 18th, and unless I got it on that day I was gone from the office for the following 10 or 12 days, being in the hospital. So it is possible that [fol. 795] I read it that day or it is possible I read it when I came back, but I did read it, yes.

The Court: That is by whom, you say, Connell?

Mr. Blecher: John Connell, who is a dealer in Newport Beach, your Honor.

The Court: I see.

By Mr. Blecher:

Q. Let me hand you, Mr. Roche, a copy of Government's Exhibit 12, which is a letter from Eddie Hopper of Eddie Hopper Chevrolet to Mr. Cole, general manager of Chevrolet, dated November 16, 1960.

The Clerk: That is the original exhibit, counsel. You said it was a copy.

Mr. Blecher: I am sorry.

Q. You recall ever reviewing that letter, Mr. Roche?

A. I don't remember the letter specifically. It is possible that I read it afterward. The letter was addressed to Mr. Cole and I think generally at the time those letters were retained in the Chevrolet Division. The letters I read were the letters that were referred to me, that were addressed to Mr. Gordon. It is possible I saw it; I can't answer.

Q. Let me invite your attention to this portion of paragraph 3 of page 1, which reads:

"A group of Chevrolet dealers in the Los Angeles-
[fol. 796] Orange County area are so concerned that
they joined——"

underscored in the original

"—together in order to fight this problem."

Does that aid your recollection, Mr. Roche, as to whether or not there were any discussions among the people at General Motors or at Chevrolet in which you participated, in which it was brought to your attention that the writing of these letters in November of 1960 was part of an organized effort in the Los Angeles area?

A. No, it was not—to my recollection it was not a part of any discussion we had, although I suppose it was quite apparent from the letters, at least the letters and telegrams addressed to Mr. Gordon, which I had, that there was some kind of an activity going on.

Obviously, it represented some kind of a problem or these letters wouldn't have all landed about the same time.

Q. Let me refer you back then to Mr. Gilliatt's memorandum, Exhibit 114, Mr. Roche, page 4 of this exhibit, the second paragraph, which reads:

"Since these merchandising methods have been expanding it has been a disturbing influence to the normal retail activities of Chevrolet dealers and salesmen in the Los Angeles metropolitan area, so they [fol. 797] have organized an activity of wires and letters to executives of Chevrolet and the General Motors Corporation."

Do you recall whether or not that subject was discussed at any time?

A. Well, again I think I have to refer to my previous answer, that with the volume of letters and communications that we were receiving, that something was going on that was very disturbing to our salesmen and our dealers in this area.

I don't think we needed to have formal discussion to realize that fact.

Q. The fact is, Mr. Roche, you recognized that the barrage of letters and telegrams you received all in a period of two or three weeks, starting around November 11th or 12th, 1960, were part of an organized program on the part of Chevrolet dealers in Los Angeles to bring this matter forcefully to your attention?

A. I think that that is perhaps right, but that is a perfectly normal occurrence. If there is anything that is affecting our business in the area of our dealers, I think they would feel privileged to tell us about it.

Q. I appreciate that, Mr. Roche, but what I am getting at is whether or not you recognized that these letters that you were receiving in large volume were not haphazardly coming in but were coming in because they were part of an [fol. 798] organized effort to write to you?

A. Is there anything wrong with people expressing an opinion to us?

Q. Mr. Roche, did you or did you not recognize at the time this large volume of letters and telegrams were received by you that they were coming to you because it was part of an organized effort to bring this matter to your attention, rather than an individual effort on the part of individual dealers?

A. I think that we recognized that these letters, coming in as they did, from so many different people indicated

that we had a serious problem on our hands with respect to the distribution of our products.

Q. Did you think this problem was being brought to your attention by individual dealers or did you recognize that it was being brought to your attention because dealers had decided together to write you and bring it to your attention?

A. I had no idea on that subject.

Q. Did you happen, during the time in November 1960, to question anyone in Chevrolet about the statement made by Mr. Gilliatt in his memorandum?

A. No, I had no occasion to question anybody in Chevrolet with respect to Mr. Gilliatt's memorandum.

The Court: May I ask a question? How is policy ex-[fol. 799] pressed? Can some representative of General Motors just sit down and write a memorandum and just make up a policy to General Motors?

The Witness: No, your Honor. The way this matter was handled—

The Court: I mean generally, not this matter. I am asking generally. If there is going to be a policy, isn't there some deciding group or executives that have the final say that, "This is the policy," and is that crystallized into some form?

The Witness: Yes, sir, it would be that. In this particular instance the policy with respect to the position taken in this letter was my responsibility.

The Court: What I am getting at is, these memoranda that come in from various persons, either in the field or at the home office, are they policy setting in any way?

The Witness: They would influence the action that we might take under our existing policies, your Honor.

The Court: Either for or against?

The Witness: Either for or against, that is correct. They would not necessarily have any influence with respect to changing the policy.

Letters of this kind or policy problems of this kind would be a subject for discussion among the various individuals [fol. 800] who might be concerned.

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[fol. 801] By Mr. Blecher:

Q. Now, isn't it a fact, then, Mr. Roche, that the letter which went out over your signature was, in fact, prepared by Mr. Schreitmuller, Mr. Bridenstine and Mr. Mays?

A. They participated in it, yes.

Q. Who else participated in it?

A. Mr. Crawford and myself.

Q. Who drafted the letter initially?

A. I would say that Mr. Schreitmuller did most of the leg work on the letter.

Q. Now, did Mr. Bridenstine and Mr. Mays assist him in that?

A. They counseled with him on it, yes.

Q. Now, your intention in this letter, was it, Mr. Roche, was to explain to the dealers very clearly, as you said this morning, what your position was?

A. Yes.

[fol. 802] Q. And you think that letter did that?

A. I think it did.

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[fol. 803] Q. Now, let me invite your attention to page 3 of the letter, the bottom of the page, and let me read it to you:

"The procedure whereby some discount outlets, which offer new cars for sale, make a deal with a customer, and then, as prearranged with an authorized dealer, turn the transaction over to that dealer for closing and delivery of the vehicle, is being improperly characterized by some selling dealers as a 'referral.' Such arrangements, however, are far different from the casual practice in the industry whereby salesmen encourage referrals from friends and others who chance upon a prospective new car customer. The reports we have received indicate that these discount outlets are advertising new cars for sale at established business locations, frequently far removed from the location of the selling dealer. In effect, they in some instances represent the establishment of a second and unauthorized sales outlet or location contrary to the provisions of the General Motors Dealers Selling Agreements."

With respect to that paragraph, Mr. Roche, what do you intend for the dealer to understand by that?

A. We intended that the dealer, for the dealer to understand that we were differentiating between a casual remark, or a casual tip, as the term is commonly used in the automobile industry, from a friend, an acquaintance, or somebody that so-and-so is in the market for a new car, or an occasional remark to someone that, if you are interested in a car why don't you go down to the X Chevrolet Company and see Joe Smith, who is a salesman down there.

That type of prospecting on the part of salesmen, the encouragement of friends and relatives, or relatives, acquaintances of salesmen to attempt to have people call on them when they were in the market for a car is quite a common practice. And of course we would have no reason to want to stop that in any way. On the contrary we thought that that kind of an approach is a perfectly normal thing for people who are attempting to make their living selling cars.

On the other hand, a very definite system for offering cars, such as we were given to understand existed in the discount houses, was quite different from this very casual and normal operation.

[fol. 805] We wanted our dealers to understand that we regarded such arrangements whereby they were regularly selling cars through the medium of these discount houses in our view, that represented the establishment of another location and that, under those circumstances, we would regard it as a violation of the Dealer Selling Agreement.

Q. Mr. Roche, is that what you think that paragraph says?

A. That is what the paragraph says to me. That is the intent that we expected it would have on our dealers.

Q. Then why did you say "in effect they in some instances represent the establishment of a second and unauthorized sales outlet"? What did you mean by the words "in effect"?

A. Well, "in effect" where there was a regular agreement, we believe that it was a secondary location established without approval. In fact it was another location.

Q. Why didn't you say that?

A. That is what I think we did say.

Q. Oh. Now, what do you mean by "they in some instances"? What instances did they represent a second location, and what instances did they not?

A. I suppose that in some instances that if it was an occasional car, it perhaps would not have been a matter of great significance, as we covered before.

Where it was a regularly established procedure, and [fol. 806] where these cars were being offered, in effect, in unlimited numbers as a regular part of the business dealings of a discount house, or whoever might have been operating a discount desk in the store, that that very definitely, in our opinion, would have been an unauthorized sales outlet, contrary to the provisions of our agreement.

Q. How, Mr. Roche, did you expect the dealer to figure out the standards or criteria that he was to apply in determining whether or not he came into the category of "some instances"?

A. We expected that if a dealer had any questions about it that he would seek the advice of counsel who would be capable of interpreting this provision of the agreement for him.

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[fol. 807] Q. Do you know whether Mr. Cash was instructed to tell the dealers with whom he subsequently met that they were violating their Dealers Selling Agreements by the arrangements they had with discount houses?

A. I think that Mr. Cash was instructed to tell the dealers that such arrangement did constitute a violation of the selling agreement, yes.

Q. You think so?

A. Yes.

Q. Who instructed him to that effect?

A. I would presume that his superiors in Chevrolet.

Q. Well, do you know why, then, Mr. Roche, he told some of the dealers with whom he met that he couldn't tell them what to do about this subject?

A. I am not familiar with that, no.

Q. You don't know what he told the dealers?

A. I don't know what he told the dealers. I was not there.

Q. Have you read the testimony of the dealers in the [fol. 808] record on that subject?

A. No, I have not.

Q. You are not familiar with the fact that Mr. Cash, according to Mr. Bruder's testimony, said that, I can't tell you what to do about this subject? Do you know that?

A. No, I don't, Mr. Blecher.

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[fol. 809] Q. Well, now, you testified this morning, Mr. Roche—as I understood your testimony—that you did not engage in any form of concert of activity with the dealers, is that correct?

A. That is correct.

The Court: Now, counsel, by my overruling your objection—

Mr. Blecher: You have opened the door for me.

The Court: I opened the door completely for you to fully cross examine on all of the facts that are incident to that denial.

Mr. Blecher: Yes, and I thank you again.

The Court: If I had sustained it, you would not be allowed to cross examine on it.

Mr. Blecher: Yes, sir.

May I hand Mr. Roche a copy of Government's Exhibit 201, which is a memorandum from Mr. Mays, who was the general sales manager of Chevrolet, to Mr. Crawford, headed, Sales Section, General Motors Corporation, dated January 18, 1961.

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[fol. 810] By Mr. Blecher:

Q. Part of that paragraph at the top of page 2, Mr. Roche, reads:

“Knowing that the subject was being discussed with all Chevrolet dealers in the area, every dealer voluntarily told Mr. Cash that he would stop any cooperation which he had had with various discount houses in the area. Mr. Cash said that similar reaction was received by Mr. O'Connor and the other wholesale men

who had had similar conferences with other dealers in the zone and that they sincerely believed that, through this voluntary cooperation on the part of all dealers, this serious situation will be diminished to, or near, the vanishing point insofar as Chevrolet production [fol. 811] units were concerned."

Now, when you testified this morning that you had no concert of action with your dealers, were you excluding these meetings Mr. Cash had with the dealers, and the meetings Mr. O'Connor had with the dealers?

A. No, by no means was I excluding those meetings, because the letter that went out on December 15th, and the subsequent letters that went out, the subsequent letters that went out all stated that the matters will be reviewed individually with each dealer.

And the matter was not reviewed generally with groups of dealers. It was reviewed individually with each dealer with whom we had a selling agreement.

Q. Well, do you think it makes some difference in your answer, Mr. Roche, that you denied the existence of any concert of action whether the meetings that Mr. Cash had were with the dealers as a whole, or whether they were individuals?

A. Our problems, Mr. Blecher, was one dealer at a time. We have individual dealer agreement with each dealership. And we discussed this problem with each dealer, as we indicated in our letter that we would so do.

Q. That is fine, Mr. Roche. My question is: When you denied for Mr. Mitchell this morning that you engaged in any concert of activity, did it make any difference at all [fol. 812] that the dealers with whom Mr. Cash met were met on an individual basis, rather than in a group?

A. No, because all dealers were visited on an individual basis——

Q. Well, now——

A. Each dealer in the zone was visited, in the metropolitan area was visited on an individual basis by some representative from the Chevrolet organization, as we indicated in the letter would be done.

Q. Well, if the dealers had met with Mr. Cash in a group, the six or seven or ten of them sitting all together with

Mr. Cash, would your answer to Mr. Mitchell's question have been the same?

Mr. Mitchell: I object to that, your Honor, on the ground it is argumentative, no such evidence that they met in a group.

[fol. 813] Mr. Blecher: Well I agree to that, your Honor, but I am trying to find out on what basis he made the denial.

The Court: I suppose I will allow it on the basis of the state of mind, to support his contention. I will allow it. It is in some ways argumentative, I grant you, but it goes to the state of mind, I think.

The Witness: I think perhaps it would have been, your Honor, because that is why we instructed them to meet individually with dealers.

We don't discuss their problems with dealers in groups, other than general merchandising problems and things such as that. If we have a problem with respect to any interpretation of our selling agreement, that is a matter for individual concern and action with the particular dealer involved. It is not a matter of common interest or common problem with other dealers.

By Mr. Blecher:

Q. I am not sure I understood the first part of your answer. Did you say that your answer to Mr. Mitchell's question this morning would have been different—

A. No, I did not.

Q. You said it would not have been different?

A. It would not have been different; that is right.

Q. In other words, it didn't make any difference whether [fol. 814] Mr. Cash met with the dealers as a group or individually?

A. No, no, I didn't mean to convey that impression at all.

Q. I am confused. Please straighten us out.

A. What I did say was that the letter was for the express purpose of informing each dealer that the matter would be discussed with him. That we did not expect—we did not want to discuss this problem in a group.

This was a matter of individual contract, selling agreement interpretation with each dealer, and, therefore, a matter for handling with each individual dealer and not on a group basis.

Q. Why not on a group basis?

A. Because if it were handled on a group basis I suppose we could have been charged with a conspiracy in conspiring with the dealers a group to accomplish this discount house referral elimination.

Q. You think that confusion is altered by the fact that Mr. Cash met with the dealers each individually, as opposed to a group?

A. Mr. Cash met with each dealer individually to discuss a problem that had specific application to that dealer and interpretation of that dealer's selling agreement, yes.

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[fol. 815] Q. And now, I take it from the responses you have given me, Mr. Roche, that after you wrote this letter [fol. 816] you more or less divorced yourself from control over this problem?

A. I don't—I wouldn't say that I divorced myself from control over the problem. I think that this, as with any other matter, that would come under our surveillance in the central office of the corporation and staff activity, would be that after these instructions to the field organizations that the matter would be handled as we had requested, and that if there were any further problems along those lines that they would be brought back to our attention.

Q. Now, do you know of any provision in the Dealer Selling Agreement, Mr. Roche, which prohibits a dealer from entering into a bona fide arrangement with a third party by which that third party aids the dealer in selling cars?

A. Yes.

Q. What provision is that?

A. We have a provision in our contract that the individual cannot sign or transfer any of his responsibility to a third party.

Q. Well, now, do you know whether or not, for example, under the Dealers' Diversified Service arrangement with Warren Biggs, or Bruder Chevrolet, whether there was a transfer of any obligation under the agreement?

A. I am aware of no transfer of obligation, no.

Q. Have you ever considered putting a provision in your [fol. 817] Dealer Selling Agreement, Mr. Roche, which

would deal with the bootleg problem, with the discount house problem directly?

A. Yes, we have.

Q. How long ago have you considered that matter?

The Court: What does this lead to? What is the relevancy?

Mr. Blecher: The relevancy, your Honor, is to show that the construction of this agreement, by saying discount houses were branch locations, was just an afterthought, that they had long considered the possibility of amending the agreement to cover this sort of situation, specifically, and that they recognized that this provision of the agreement would not be, could not be construed—

The Court: Go ahead, I will allow it I will allow the answer.

The Witness: The provision with respect to the establishment of another location has been in our Selling Agreement for almost a quarter of a century. So certainly it is not an afterthought.

It is a living document that—a living part of our contract, the Selling Agreement which has been with us for a long, long time.

We did consider the bootlegging problem, we have considered it on many different occasions, going back ten or [fol. 818] twelve years.

And we have had a great deal of experience with it. We have expressed our opinions to our dealer organizations on many occasions, from the top executives of our corporation down through our field organization.

And we even took the matter of the bootlegging problem to the Department of Justice for an interpretation back, I think in 1954. And we were given an interpretation which, rightfully or wrongfully, convinced us that there was very little—that there was nothing that we could do about a bootleg sale as such, because a dealer had a right to sell a car to anybody, at any time, at any price that he selected. [fol. 819] However, in recognizing that right we have consistently pointed out to our dealers that we do not subscribe to that system of operation, we do not condone it. We think it is harmful to their business as well as ours, and the good name of our product. That has not stopped the bootlegging problem, though. It is still with us, but

it is not serious. But, nevertheless, it is not completely eradicated.

[fol. 820] Q. Was the policy of General Motors, where you find a dealer has violated his agreement, to repurchase cars that he sold?

Is there any policy promulgation on that, Mr. Roche?

A. No, a dealer would be under no obligation whatsoever to repurchase any car that he sold.

Q. You don't think he would refuse if someone from General Motors asked him, do you, Mr. Roche?

[fols. 821-822] A. It is quite conceivable that he would, yes. He might or might not. He certainly is under no element of compulsion to do so.

[fol. 823] June 19, 1964.

JOHN F. GORDON, called as a witness on behalf of Defendant General Motors Corporation, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Mitchell:

Q. What position do you hold in General Motors, Mr. Gordon?

A. I am president and chief operating officer of General Motors.

Q. I would like to have you give us a brief history of your career. Let's start with your college times and [fol. 824] briefly run through until the time you became president of General Motors.

A. I was graduated from the U. S. Naval Academy at Annapolis in 1922 and received a master's degree in mechanical engineering from the University of Michigan in 1923.

I joined General Motors shortly after I received my

master's degree at the Cadillac Motor Car Division in Detroit.

I was with Cadillac for approximately 20 years before I reached the position of chief engineer of the Cadillac Division in 1943.

In 1946 I was elected vice president of General Motors and general manager of the Cadillac Division.

In 1950 I was made vice president in charge of the engineering staff activities of the corporation, and in the following year I was made group executive in charge of the body and assembly divisions of the corporation. I stayed in that position until I was elected president in September of 1958.

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[fol. 825] Q. When did the use by Southern California dealers of discount houses as sales outlets first come to your attention?

A. Oh, I would say about the middle of November in 1960 when I received multiple letters and telegrams from dealers and dealer's salesmen, and sales managers operating in the Southern California area.

Q. Were these confined to Chevrolet dealers, or to dealer's salesmen?

A. No, they were broader than that. There were—I remember one specific letter which came from a dealer association which involved all dealers.

Q. What dealer association was that?

A. I don't remember the specific name of it, but it was a general association of automobile dealers. As I remember there were 50 or 60 dealers in that particular association.

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[fol. 827] Q. You spoke of a dealer association which included all makes of cars, you mean rival makes such as Ford, Rambler and so on?

A. Oh, yes, yes.

Q. You say these letters came in quantity?

A. Yes, they did.

Q. And did that give you the impression that some sort of a letter-writing campaign was going on?

A. Oh, yes. Whenever you receive letters or wires in batches very closely timed, you recognize that there is a campaign of some type going on.

Q. Did you know what these dealers were doing, or how they had gone about it?

The Court: Now, that means did you know, did you know personally.

The Witness: Well, I know this, the letters and wires which were sent carried many allegations and claims by the dealers as to what was going on.

The Court: No, that is not what he asked you. He asked you if you knew what was going on.

[fol. 828] The Witness: No.

The Court: All you knew was what they were telling you, isn't that right?

The Witness: That is correct, your Honor. No, I did not know what was going on.

By Mr. Mitchell:

Q. What did you do with these letters and telegrams?

A. I read enough during the first few days to be familiar myself with the contents and the allegations, the charges that were in the letters and wires.

And then I sent them on through normal channels, through the distribution staff for consideration.

Those which arrived subsequently to, I would say, the first week or so, were just automatically routed to the distribution staff for handling.

[fol. 829] Q. Did these letters cause you, as president of General Motors, any concern?

A. Oh, yes, great concern, naturally.

Q. What were you concerned about?

A. I was concerned about the disruption that was indicated in our retail distribution system in this particular area. I was concerned because of indication here that we were moving into an area there which could be very disruptive, you might say, of our planned distribution facilities in the area. And that it was bound to cause us a great deal of worry and trouble.

Q. In what way were you thinking it would be disruptive to your plan?

A. Well, over the many years I have been associated with General Motors we have developed what we feel is, if not an ideal distribution system, franchise system, it is about as close as we know how to make it at the present time.

This was very evidently a force coming into the field that was bound to have serious effects on our distribution setup in this area.

Q. How did you think that sales by dealers through discount houses would have a disruptive effect?

A. Well, having studied the distribution system, along with the other factors that we have in the operation of the corporation, I have great respect for what is evolved from [fol. 830] what I would call the school of experience in the merchandising area.

There have been times, of course, when there were excursions away from the present franchise system due to various conditions, and it seemed to me that this was another one of the same type of thing, which is bound to, let's say, disrupt or eat into our distribution plans.

Recognizing those plans have evolved over a period of many, many years, changes of the magnitude that could be indicated here could bother a great deal.

Q. What I am trying to ask you, Mr. Gordon, is how it would bother the plan to have dealers use discount houses as sales outlets.

The Court: What he is asking you to do is descend to specifics.

The Witness: Yes, your Honor.

The Court: Give us a bill of particulars.

The Witness: In the specifics area our policies relative to distribution require or indicate that there is a desirable number of dealers in any given metropolitan area or any area of the country, as far as that goes, which is correlated to the actual requirements of that area for the sale and servicing of cars and taking care of the customers who purchase those cars.

The Court: May I just ask a question?

[fol. 831] The Witness: Yes, sir.

The Court: I take it what you are saying is that encompasses both research and experience.

The Witness: Yes, sir.

The Court: And, as a matter of fact, I take it you started with General Motors in what, 1922?

The Witness: '23.

The Court: So you have more or less grown up with the development, is that right?

The Witness: To a considerable extent, yes.

The Court: And when you use the term "experience", which, of course, is a most important thing in any business, are you talking about records that have been kept, reports that have been made by the various and sundry representatives in the employ of General Motors throughout the years?

The Witness: Yes, the very fact that we have a relatively large staff in the corporation and a comparable group of men in each division who devote their entire time to problems in the marketing, merchandising, distribution area, is indicative of the amount of material that we gather, the records that we keep, the information we have to have to enable us to determine the correct number of dealers and the correct locations for those dealers, so that we are enabled to merchandise the number of cars that we would like to merchandise.

[fols. 832-833] At the same time that we do not put in the hands of our dealers excessive quantities of automobiles in relation to the market needs, and that we are in a position to satisfy our customers' requirements at any time in any location, any place in the United States.

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[fol. 834] Q. You say that your concern arose out of the fact that you want the correct number of dealers in the correct places. Those were approximately the words you used.

What do you think this discount house arrangement type of selling does to the correct number of dealers in the correct places?

A. Well, it establishes the possibility of almost unlimited number of additional points of contact with customers for the sale of automobiles.

It actually—acceptance of it means our waiving of the control over dealers operating from a single location or our provisions in the selling agreement of not allowing a dealer to establish an additional outlet.

[fol. 835] Q. When you say provide for an almost unlimited number of contacts, are you referring to the possibility of an almost unlimited number of business establishments where Chevrolet cars would be sold in an area?

A. Practically unlimited number of additional outlets, yes, for contacting retail customers.

I might add that in addition to the number, it also provides, you might say, for unlimited, or uncontrolled location of those outlets in relation to the geographical pattern of distribution, which we think is an integral part of having a good retail selling organization, and the placing of that organization.

Q. Do you make any effort to avoid the haphazard location of outlets for sale of your cars?

A. Oh, certainly. We moved into that position 25 or 30 years ago, in which we moved from the study of a metropolitan area, as an area, into a neighborhood study, you might say, in which we broke down the sales records and the potentials of, into very small increments within a metropolitan area to assist us in getting proper locations for these retail outlets.

Q. Do you think additional outlets would dilute the sales of your correct number of dealers and the correct locations?

A. I think experience has demonstrated that rather forcefully [fol. 836] fully, yes.

It is necessary for any dealer, or for us in a position to get a dealer to take a retail location, it is necessary, of course, that there be adequate gross profit potential from a location and the investment standpoint, that he be in position to make a fair return on his investment. Otherwise you wouldn't be able to influence or to persuade anybody to go into the retail automobile selling area.

Q. After the receipt of these letters and your turning them over to your distribution department, did you have any discussions about this problem with Mr. Roche?

A. Yes, I did.

Q. Or anyone else in the distribution department?

A. Yes. I think I spoke to Mr. Crawford maybe one or two times during the interval in which the letter was being developed, rewritten.

Q. What did you talk about?

A. About the same type of thing we always do when we are either working on the development of a policy or

a letter, or things of this type, as to what progress is being made, what direction the contents of the material are moving. And as a general rule when we will be in a position to actually send that material out—always looking towards [fol. 837] the finish of the job, I would say.

Q. Was there any discussion of the position which General Motors would take on this problem?

A. Oh, yes, certainly. Any time that there is a policy or a restatement of principles or policies, or explanations of the corporation's position, there is always great interest, of course, to be sure that it is in conformance with, not only with my thinking, but with the thinking of the whole governing group of the corporation.

Q. Was there any discussion about making General Motors' position on this discount house problem known to all of the General Motors dealers throughout the United States, in all of its makes of cars?

A. Oh, no, that was understood. In other words, we would never take a position of this type on a segmental basis.

We always have to work on the basis that our policies and our principles are equally adaptable to the sales force and the dealer organizations of each of the divisions representing General Motors in the field. So that we would never be in a position to move in relation to just the Chevrolet dealers, say, as a segment, or Buick dealers as a segment.

We have to look at it from the corporate standpoint. So that is equally applicable to all of the dealer groups.

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[fol. 838] Q. In these discussions with Mr. Roche that you had, after turning the letters over to the distribution department, what were you planning to do with respect to this policy that was being developed, or this position that was being developed by the staff?

A. It was our intention to make known that position to all dealers.

Q. Of the General Motors Corporation?

A. Of General Motors Corporation.

Q. Throughout the United States?

A. That's right.

Q. That is what you talked about?

A. That's right.

The Court: In other words, if I understand you, you were just facing up to the problem that affected the corporation, [fol. 839] and all of the executive department in what to do, is that right?

The Witness: That is correct.

The Court: And what action to take?

The Witness: That is right.

The Court: I take it that is true in every instance where problem arises of major importance?

The Witness: Practically always, yes.

The Court: In other words, General Motors, having been in business over the many years, you have a rather definitely defined policy, sometimes you don't require any discussion at all, is that right?

The Witness: That is correct.

The Court: But when some problem arises that tends to create additional problems, then I assume that the executive department, meaning the members up through your echelon, sit down and go over it and try to find out what to do about it, is that right?

The Witness: That is correct, your Honor. Our form of organization has been publicized quite often as one of centralized policy control.

And on that basis it is—it is a requirement, you might say, that we do have a centralized policy control so that the different divisions and activities of the corporation are not working at variance with each other in policy matters, [fol. 840] whether they lie in the area of distribution, marketing, public relations, personnel relations, legal, financial, and all of the different staff activities which we carry on as a part of our centralized organization.

[fol. 841] The Court: What I would like to ask you, too, is, where does lie the final authority to make the decisions?

The Witness: Well, to answer that particular question, your Honor, I think you would have to know a little bit about the organizational structure of General Motors.

With your permission I—

The Court: Briefly yes. I think it might be the thing. I want to find out whether or not you make these decisions,

and I take it you have your executive committees and committees——

The Witness: Yes.

The Court: —you have the board of directors and you have your officers, your vice presidents, who are assigned to various functions,——

The Witness: That is correct.

The Court: —and on down the line.

Now, the thing I am getting at is, when you have a problem of this kind do you make your decisions there in Detroit or do you depend upon some—other than facts, I am not talking about facts now. Do you depend upon any advice from any other source to determine your findings?

The Witness: No, your Honor, we do not. We make our decisions based entirely on our own findings. But, of course, in the consideration of the facts going into those decisions we make every attempt to give consideration to [fol. 842] the equities of all the other people that are involved. We give every consideration, of course, not only to the legality but also to the appearance, you might say.

The Court: I take it there are times and times when you get recommendations from district managers, zone managers and from groups within your own organization and you don't follow them at all. That probably happens, doesn't it?

The Witness: Quite right, frequently.

The Court: If you followed the advice given you probably you would have a different financial report nowadays.

The Witness: We would have utter confusion.

By Mr. Mitchell:

Q. In your discussions with Mr. Roche, did you instruct him to consult with any dealers or dealer associations on the position General Motors could or should take on dealers' use of discount house outlets?

A. No, I did not.

Q. Did you yourself consult or cause anyone to consult with any dealers or dealer associations in deciding what position to take?

A. No.

The Court: Did you instruct anyone at any time to do just exactly that?

[fol. 843] The Witness: I didn't instruct anybody on the distribution staff, including Mr. Roche, to do anything specific, your Honor.

The Court: All right.

The Witness: We don't operate in General Motors on that basis.

By Mr. Mitchell:

Q. Are you interested in what your dealers think about various distribution problems?

A. Oh, certainly, intensely interested. That is demonstrated by the fact that we have dealer counsel meetings and we council with the dealers in many cases many times on all kinds of subjects as they affect their particular part of the business, their area of business, I should say probably.

Q. After the distribution department had worked on this problem, was there submitted to you for approval any statement of General Motors' position?

A. As I remember it, I think I may have even looked over some proposed drafts of this—you are speaking of the Roche letter specifically?

Q. Yes.

A. I am not too clear on that point, but I have a feeling I probably looked over drafts before the final draft was reached. But I am fairly certain that I looked over the [fol. 844] final draft very carefully and discussed it with Mr. Roche before it was ever ready to go out, yes.

Q. Did you approve its sending?

A. Yes, I did.

Q. Why?

A. Because I felt it was the best thing to do for General Motors, under the circumstances that existed in the field.

Q. At that time did you know the names of the three different dealers associations; Losor Dealers Association, Foothill Dealers Association, Dealers' Service, Inc.?

A. No, I did not. I didn't even know there were associations here of that type.

Q. Did you know whether or not the dealer associations or any of them had had anything to do with this letter campaign that was visited upon you?

A. No.

The Court: May I ask a question there?

These letters that were coming in, you heard, of course, about these protests that were coming in?

The Witness: Oh, yes, I read a number of them.

The Court: You considered those to be from whom?

The Witness: I considered them to be from the people who signed them. I recognized the fact there must be a campaign.

[fol. 845] The Court: I mean, was it a group? Was it a group of dealers or individual dealers or just what did you consider them to be?

The Witness: All those I remember, your Honor, were signed by individual dealers or by salesmen or employees of dealers. I don't remember any that carried any other designation in the signature than that.

By Mr. Mitchell:

Q. Well, Mr. Gordon, speaking for yourself and the part you played in this program of General Motors, did you combine or conspire or act in concert with any General Motors dealers or any dealer associations?

A. No.

Mr. Mitchell: Cross-examine.

The Court: Well, I would like to further question. If I may ask it, this question, since you have opened it up:

To your knowledge, did you ever do or attempt to aid in any way the Chevrolet dealers in this area simply for the purpose of appeasing them or taking up the problem of solving their difficulty?

Do you understand the question?

The Witness: Yes, I understand—

The Court: It is the motive. I am getting at the motive, why they acted.

[fol. 846] The Witness: The motive.

The Court: What was the motive behind the action, solely the motive?

The Witness: No, I might say this, your Honor: From the standpoint of my position in General Motors I never act on the basis of a segmental group, whether it is in distribution or any other phase of the business, because—

The Court: Maybe I framed the question badly. I think I probably did.

What I am getting at is this: Let us assume that you had considered that it wouldn't have injured General Motors at all, only it might have harmed some dealers, would your actions have been the same?

The Witness: My action is always going to be on the basis of what is the best policy for General Motors to follow.

The Court: So I take it what you are saying here is that—let's put it very bluntly—what I gather you are saying is, "I was representing General Motors first, last and always"?

The Witness: Always.

The Court: All right.

The Witness: And nobody else.

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[fol. 847] Cross-examination.

By Mr. Blecher:

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[fol. 848] Q. Apart from your motive, Mr. Gordon, I am asking you whether or not, in taking the action that the dealers urged you take, namely, to eliminate the sales of Chevrolets through discount houses, you did not recognize that the necessary result of such action would be to eliminate some competition among the Chevrolet dealers in this area?

A. No, I did not. I don't think I ever have taken any action or considered any action which would eliminate competition in any segment of the business.

[fol. 849] Q. Perhaps I am inarticulate, Mr. Gordon. I am not asking what your intention was, simply whether or not you recognized first that the dealers were complaining to you about competition.

A. I recognized the dealers were complaining about competition and other things.

Q. And you knew, did you not, from reading the letters which you observed, that they were asking General Motors to do something about that competition, did you not?

A. My own impression of it was that they were asking

General Motors to, you might say, to restore competition on the basis of our franchise system of distribution.

Q. Were you aware that the competition created by the so-called discount house situation was, in fact, competition among Chevrolet dealers in the Los Angeles area?

A. I think it is broader than that,—if I may be pardoned for saying so.

The competition which you are speaking about goes beyond the Chevrolet dealers in the Los Angeles area. It extends to all dealers in the area, both competitive makes and makes within the corporation.

So that there is plenty of competition.

Q. That may well be true, Mr. Gordon. But what I am [fol. 850] asking you now is whether or not you were aware of the fact that the sales being made through discount houses by some Chevrolet dealers, in fact, created competition among Chevrolet dealers in this area?

A. I don't think they increased the competition, if that—

Q. Do you think they decreased the competition?

A. No, I don't think they altered the competitive factor one iota. I think there was already as much competition in the area as could be achieved, both as I indicated both through our own dealers and through competition with other dealers.

Q. Don't you think—

A. So that—

Q. Excuse me.

A. So that establishing additional outlets of the type that you are talking about, in my opinion, did not increase the competition one iota.

Q. And what was it that you understood the dealers were complaining about in terms of competition?

A. My opinion there, my feeling was that the dealers felt that in establishing these points of contact with the customer, selling points on the product, that there were things going on in the retail end of the business which they were prohibited from doing by their own selling agree- [fol. 851] ments, and that the utilization of these additional points by other Chevrolet dealers in this area was resulting in giving them, you might say, or allowing them an unfair advantage.

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[fol. 852] Q. Mr. Gordon, did you not perceive, as you read the salesmen's letters and the dealers' letters, that they were complaining to General Motors about price competition created by Chevrolet dealers selling through discount houses?

A. They were complaining to us about conditions existing in the Los Angeles area in the retail merchandising of automobiles.

Q. I take it then you deny that you perceived from these letters that they were complaining about price competition?

A. I didn't deny anything.

Q. Well, were they or were they not, as you perceived these letters?

A. They were complaining about competitive conditions in the Los Angeles area, yes.

Q. And in complaining about competitive conditions, didn't they ask you to do something about it?

A. Yes.

Q. Didn't you realize that if you did something that you would be somehow affecting the nature of competition among the dealers here?

A. Somehow affecting it?

Q. Yes.

[fols. 853-854] A. Certainly.

Q. And if, in fact, there was price competition created by dealers selling through discount houses, any steps which General Motors took to prevent such sales, in fact, affected that price competition, did they not, Mr. Gordon?

A. You introduced price competition in there in the phrasing of your question. And that was not a part of my answer, because in my opinion, as I have said before, price competition was in this area to the maximum before this ever came into the picture.

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[fols. 855-856] Q. Mr. Gordon, is it your understanding that the people that were buying cars at the discount houses were not saving money, at least in their own minds?

A. It is my opinion that many people have been influenced to purchase things under the aura of a discount procedure such as is applicable to discount houses here, and probably still is.

But I don't think that I am in a position to sit here and indicate what was in people's minds, or what was the motivating factor for their purchasing automobiles.

The Court: Well, we must face up to it, in some cases discount houses do give a better price, don't they?

The Witness: Yes.

The Court: There isn't any question about that.

The Witness: I think that is true, yes.

The Court: So they are——

The Witness: But not as a general rule.

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[fol. 857] Q. Your dealer distribution system is established, Mr. Gordon, in a way you think will induce the purchaser to buy a car generally, as a general proposition, in the proximity of the place where he lives, is that correct?

A. Essentially, yes.

Q. Therefore, a person in the San Bernardino area would, under your scheme of things, likely buy a car in the San Bernardino area, would he not?

A. Well, let's say the odds would be more favorable that he would buy in the San Bernardino area.

Q. What factors then, Mr. Gordon, in your judgment, would impel a man to get in his car in San Bernardino at a referral service Fedco Store and drive 60 miles to Warren Biggs' place of business to find out whether he could buy a car there cheap?

A. Would you state your question again, please?

Mr. Blecher: Mrs. Wright, please.

(The question was read.)

[fols. 858-859] The Witness: I imagine there again I have to project myself into his position as to what would be motivating him. I would presume, under the circumstances, that he felt he would be getting a better deal on that basis than he would be to go to anyone else.

By Mr. Blecher:

Q. You think all the people, Mr. Gordon, who are engaged in this sort of traveling back and forth to referral services, to dealers, these distances were under an illusion they were saving money?

A. I didn't say they were under an illusion they were saving money. I say in the opinion or in the mind of the person that was doing it he must have felt he was saving money or achieving something.

* * * * *

[fol. 860] Q. Well, do you believe that, having taken steps to eliminate the sale of Chevrolets to discount houses, in the early part of 1961, that your action in that regard has had any effect whatsoever on price competition among dealers in this area?

A. If you restrict it to price competition, I think it had no effect.

Q. Suppose I just eliminate the word "price", do you think it has had any effect on the nature of competition among and between Chevrolet dealers in this area?

A. Between Chevrolet dealers in this area?

Q. Yes.

A. Yes, I think there has been some effect there.

Q. What effect do you think it has had in that connection, sir?

A. That all Chevrolet dealers are operating on a comparable basis now in relation to competitive conditions.

Q. You mean you have more or less prohibited dealers from cross-selling?

A. No, no, not at all. We have never prohibited dealers from cross-selling.

Q. Didn't the elimination of discount house outlets by Chevrolet dealers have the effect of at least suppressing the ability of dealers to cross-sell?

A. No.

Q. Did you understand as you read the letters from dealers and salesmen that that was one of the natures of their complaint, namely, that dealers from the city, for example, were invading the province of the Orange County dealers?

A. No, I don't think that the Chevrolet dealers felt then or feel now that we have ever done anything, from a policy standpoint, which would affect their right to cross-sell.

Q. You don't think that the ultimate steps taken, to eliminate the sale of Chevrolets through discount houses has had any effect in that area whatsoever?

A. I don't think we have taken any steps here that would have any effect on the cross-selling right of dealers.

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[fol. 863] The Court: Now then, the question is whether or not that competition was the thing that caused you to make—you or your company to make the final decision, or was it evolved because all the standards were different between, say, the discount house and the Chevrolet dealer, the equipment involved and the maintenance of the cars, and all the other things that went into it.

What I am trying to get at is, you didn't just go out and say to yourself or to your group, "We are going to do this, but we are not considering—we will just eliminate any thought about price"? Or did you not discuss it?

[fol. 864] The Witness: We didn't discuss the price factors at all because we have recognized for a long period of time that we have no control nor do we attempt to have any control, nor do we want to appear to have any control over the dealer's right to sell his automobiles, once the title passes to him, to sell his automobiles to anybody, any place at any price that he may wish to put on it.

[fol. 865] The Court: All right. Then why did you wish to stop the discount house business? What was back of the philosophy of your action?

The Witness: Well, I think I have already answered.

The Court: I know it, but I would like to have it again. You know there is a certain thing called cross examination, sometimes a lawyer asks the same thing two or three, four or five times.

The Witness: Yes.

The Court: And they do it for a purpose.

The Witness: Well, I will go back to an action just last week in which I was signing the papers to put a new dealer into operation under our Motors Holding operation——

The Court: You mean a new Chevrolet dealer?

The Witness: A new Chevrolet dealer in another city.

The real estate alone on that dealership amounted to \$900,000.00. That is outside of all his operating capital.

In other words, we are asking a young man—he happens to be a Los Angeles resident—to go into a dealership, take over the operation of business and make a return on in-

vestment with an initial investment of around a million [fol. 866] and a half dollars. And that is a great responsibility.

I was very much interested in it because under the Motors Holding agreement, of course, we are furnishing a good part of the franchise capital for that dealership.

I want him to be a success. In looking over the figures applicable to that dealership, the gross profit potential, all the other factors and other things, he has to sell a very sizeable number of units each year, of course, to make a return on that investment.

And I am very anxious that he does sell that number of units per year.

So I am going to do everything within my power, legally or any other wise——

The Court: You mean any other wise legally?

The Witness: Any other wise legally, yes.

(Laughter in the courtroom.)

The Witness: —to be sure that he has the opportunity of doing a good job to make a return on his investment. But also to represent us in a way that it will build up our future business in that area, along with his future business.

The Court: What you are saying is that it wouldn't add to the company to have him sell, over a period of five years, a hundred thousand automobiles if it ended up by giving you a black eye.

The Witness: Absolutely. We are building for the [fol. 867] future.

The Court: Just one other question and then I am finished, counsel.

What I am trying to get at, it is a rather difficult thing to do, and that is with this involvement of equipment, service, many other things, the discount house, of course, does not have any of those things.

The Witness: None.

The Court: And how in—if you will just say once again very briefly—in what different ways would the discount house do a disservice, that is, trading at the discount house would do a disservice to the distribution of Chevrolet automobiles?

The Witness: Well, it starts right in with the facilities and service picture which you more or less touched upon.

They are not equipped, either as a location, or facility, to do the right kind of job for General Motors.

They are not equipped from the service standpoint to follow on. They are not equipped to maintain, through attention to the customer's needs during the interval of time in which he owns that car, operates that car, they are not equipped in any way to be of service to him, to maintain his loyalty to our product.

[fol. 868] The Court: Well, I am wondering if the thing that doesn't strike me as one of the obvious factors, and that is if you—if I can sell a Chevrolet, a Plymouth and Ford—it is just like a grocery store, if I have a clerk in a grocery store and I have got three brands and someone comes in, they don't promote any brand at all. But if you just have one brand, you promote that. I think that is rather important, isn't it?

The Witness: Very important.

The Court: In other words, if you come in and ask for one type of sardine and you have got three types on the shelf, you can say, take your pick.

The Witness: You see, brand loyalty is the most important motivating factor for the sale of new cars.

The Court: I take it you like a salesman who just keeps saying Chevrolet is the best?

The Witness: Absolutely.

The Court: Go ahead, counsel.

By Mr. Blecher:

Q. Mr. Gordon, what I don't understand about this colloquy is why you believed that the sale of Chevrolets from discount houses was going to adversely affect any single dealer? What does that follow?

A. As I indicated before, Mr. Blecher, the proper, most adequate solution of retail distribution is to have the [fol. 869] right number of dealers of the right type in the right location with the right facilities for both sales and service of our product.

The discount houses do not meet any of those requirements, in my opinion. And any of those factors, or any factor in this business, or any location in this business which does not meet those basic requirements of good retail selling is bound to have an adverse effect over the long

pull, or even over a relatively short pull, on the established franchise dealers of the corporation.

Q. Well, how did you expect them to sell enough cars, if the system was so bad, to have any adverse effect on anyone? Why wouldn't they just fold up, like the 3,000 other cars that were in business here throughout the history of the automotive industry?

A. Quite a few times in the past I have seen other organizations over-dealered in certain cities of the country. And they always end up in difficulty.

I think it would be equally applicable here, because what this amounted to would be equivalent, the equivalent of appointment of a number of additional dealer outlets in this area.

Q. Then why was it equivalent, Mr. Gordon, if there were no sales service facilities, no parts to be sold, no experienced salesmen on the floor, no sign indicating it was a [fol. 870] place of Chevrolet business, why would you say it was the equivalent?

A. Because it was the opportunity, in establishing a given location, to contact customers who were in the market for a retail purchase of an automobile. And those particular customers were not exposed to the franchise dealers, in this case.

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Q. So then if this system was so bad, why wouldn't the normal competitive effect of the dealers take care of it?

A. I didn't exactly say the system was so bad. I just said that our franchise system was much better.

Q. Well, then, I don't understand why you didn't expect it to die of its own accord.

A. In the process of dying of its own accord, if this interval extended over any extended period of time, I [fols. 871-872] think we would have had considerable mortality among our own dealers.

Q. What would cause that mortality, Mr. Gordon?

A. Having too many outlets in the metropolitan area.

Q. You mean just because there are outlets dealers would go out of business?

A. Yes.

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[fol. 873] Q. Let me rephrase it for you, Mr. Gordon. Is there any doubt in your mind that the dealers who were doing business with discount houses were creating competition for those dealers who were not?

A. I think any sale is made, no matter how it is made, of course, is creating competition, yes.

Q. Wasn't it perfectly obvious to you, Mr. Gordon, that if you took any steps to stop the dealers from doing business with discount houses, that you would be eliminating that competition?

A. But I don't think we were taking any steps to eliminate sales.

The Court: What he is asking you is—I think you can give a yes or no answer—that is, by stopping the use of discount houses you were stopping at least that phase, if it was, of competition, isn't that right?

The Witness: That is right.

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[fol. 876] The Court: I thought what I would like to do, if it would meet with your thinking, is that I think I might be wise to finish reading this material.

If I have your proposed findings and I have done some study, then I will be in a better position to do what I call the Socratic discussion. I think most lawyers prefer that because if I have a lingering misconception of something, you have an opportunity to eliminate it, you decide by me, so to speak, talking it out with you. I learn where my mistakes are then. It might even prevent a reversal on appeal.

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[fol. 877] The Court: What would you say to this idea?

Mr. Blecher: I think it is a fine idea. I am all for it.

The Court: Judge, what do you think, how long will it take to work out your proposed findings?

Mr. Hansen: I can't intelligently answer that at the moment, but I certainly agree with preparing the proposed findings and then arguing afterward.

The Court: You see, I can go through the copy of the proposed findings, check-mark something, and go back to the

record and read it and review it, and when I come in here for argument I am in a position to know a little bit about what I am talking about.

Mr. Mitchell: Yes.

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[fol. 878] The Court: Let's have the understanding at the conclusion of this testimony we will not go forward with any argument and we will expect each side simultaneously to present their-proposed findings, lodge them with the court [fol. 879] and be sure and lodge a most legible copy, which I will want to work on, and then we will set this matter down for argument. Do that before we leave the courtroom on Tuesday, is that satisfactory?

Mr. Blecher: Satisfactory.

Mr. Hansen: Satisfactory.

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[fol. 880] By Mr. Blecher:

Q. Mr. Gordon, is it your view that the franchise system of distribution, as it is now established by General Motors, would not survive if there was too vigorous a degree of competition among and between the dealers?

A. I don't think you can have too vigorous a degree of competition among and between dealers.

Q. What I mean is—let's just suppose we have a dealer up in Glendale that would decide to come down into Orange County and sell cars at prices there that were substantially below what the going market price was in Orange County. Do you think that would have an effect, a serious effect on the franchise system?

Mr. Mitchell: I object to that question on the ground of ambiguity, whether he is coming down there with someone else or by himself, or—

Mr. Blecher: By himself, Mr. Mitchell, by himself. He [fol. 881] has got people knocking on doors.

The Witness: You mean on a cross-selling basis?

By Mr. Blecher:

Q. Yes.

A. That he would be cross-selling in that area?

Q. Yes, vigorous cross-selling at low prices. Do you think that would have any effect on the franchise system?

A. Well, as I have said several times, cross-selling has never worried me. Nor does the price competition of individual dealers worry me, because I believe that the competitive situation in that area will take care of that.

Q. Well, I take it then from your answer that we could say that you don't believe that a Glendale dealer coming down and vigorously soliciting sales in the Orange County area at low prices would have any effect at all on the franchise system?

A. No. My answer to that would be that I would not attempt to influence that dealer in any way, from a policy standpoint, if that was his desire.

Q. Well, apart from whether or not you would determine to influence him, Mr. Gordon, what I am searching for is what you believed the effect of that sort of conduct would be upon the franchise system.

[fol. 882] A. I don't think that the long range effect would be great on the franchise system, so long as he operated on a cross-selling basis.

If, however, he were to establish another outlet in that area, then I think the effect would be quite adverse.

Q. That is, you believe he can sell more cars outside his territory if he has an outlet to use than he could if he had no outlet?

A. It would depend a great deal on how he operated that point.

There again, it is conjectural thinking, as far as I am concerned. I have no way of determining in advance what might happen in such circumstances.

Q. But you don't think that a Glendale dealer selling at low prices in significant volume in Orange County would have an effect on dealers down there at all?

A. Oh, certainly it would have an effect on dealers.

Q. Well, do you think it might dilute the market in the Orange County area to a point where one or more of the dealers might have to go out of business?

A. You say dilute the market—

The Court: Yes, dilution. I wonder what you mean by dilute.

Mr. Blecher: That is their word, your Honor.

[fol. 883] The Court: Yes. And I wondered when they used it what it meant. I don't understand.

Mr. Blecher: This is what I am trying to get at. I don't understand myself and I am trying to find out from the witness how a market is diluted.

The Court: Yes.

The Witness: Well, that really wasn't your question. I will go back to your question.

I happen to feel that in a given area, such as you are mentioning here, and probably based on our own research, statistics and so forth, that there are about so many current potential sales in that market.

And that those sales can be achieved by a good retail distribution setup in that area.

Now, if somebody comes in on a cross-selling basis, it certainly is going to affect the distribution and sales by the dealers in that area.

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[fol. 884] Q. Now, can't you fairly conclude from that, Mr. Gordon, if a number of dealers engaged in vigorous cross selling activity, wholly apart from any discount house outlets, that there might be, because of such activity, a serious effect on the franchise system as you now have established it?

A. I think any activity along that type, over a period of time, will certainly have an effect, yes, on the retail distribution.

And I think the general effect of excessive amounts of cross selling would be to put dealers in a more precarious position in those areas in which there is concentrated cross selling.

Q. Isn't there——

A. I hope you are not getting——

Q. Excuse me.

A. —the impression here that I am supporting cross selling as a desirable objective. I have no objection to it, but I am not putting myself in the position of saying it is

desirable to encourage the maximum amount of cross selling.

Q. That is precisely right, isn't it, Mr. Gordon, a large degree of cross selling would have, would it not, precisely [fol. 885] the same impact on the franchise system as you fear would happen by reason of discount house sales?

A. No, it would not, Mr. Blecher, because cross selling originates with franchised dealers in the area covering the actual product requirements in that area.

The other discount house approach increases the number of outlets and then you get into the dilution, which you are speaking about, of the selling effects of a multiplicity of points in the metropolitan area.

Q. I can't quite follow that, Mr. Gordon. You mean if—let's say a dealer in Glendale and a dealer in Hollywood, apart from any discount house activity—

A. Yes.

Q. —came down into Orange County and vigorously solicited business there, at low prices, that that wouldn't have the same effect as those same dealers taking the same business away by reason of having a discount house through which they were selling?

A. No, that is just the first step of a multiplicity of outlets in the area, which goes way beyond the area's requirements for an adequate distribution system.

I mean to reduce it to absurdity, suppose you put in twice or three times the number of discount house sale points, or any way you want to put it, in relation to the number of dealers in the area, and that is going to dilute the market [fol. 886] to the extent all dealers will suffer and some dealers will undoubtedly go out of business through bankruptcy.

Q. Just how do you arrive at that conclusion, that they would necessarily go out of business?

A. As I indicated, this system of franchise distribution has grown up over a long period of years, from actual experience in the retail selling of our type of product; a very complicated product.

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[fol. 887] ROBERT M. O'CONNOR, called as a witness on behalf of the defendant General Motors Corporation, having been first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Robert M. O'Connor. O-'-C-o-n-n-o-r.

Direct examination.

By Mr. Mitchell:

Q. What position do you now hold with the General Motors Corporation?

A. I am the manager of the metropolitan city and dealer development department for the eastern half of the United States in our central office in Detroit, Michigan.

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[fol. 888] Q. Briefly, what has been your experience with General Motors?

A. Mr. Mitchell, I was first employed by the Chevrolet Division of General Motors in 1937 in our central office in Detroit, Michigan.

I served from that period until 1942 in our dealer organization department, our general sales department and in the auditing department.

In 1943 I entered the United States Air Force as a second lieutenant. I served the intervening years until 1946 in Europe; was separated from the Air Force in early 1946 as a lieutenant colonel.

In 1946 I returned to Chevrolet in the midwest region, serving in various capacities in the Omaha zone, the St. Louis zone and the midwest region as district manager, organization manager, business manager and assistant zone manager.

In 1954 and '55, and part of '56 I was assigned as city manager here in Los Angeles, California.

In 1956 I was assigned to the Green Bay zone in Wisconsin as zone manager, and was there until 1958 when I was again assigned to the Los Angeles area as zone manager here in Los Angeles.

I remained here until 1962, when I was assigned to the [fol. 889] Great Lakes region, stationed in Chicago, Illinois,

as assistant regional manager of that region. And I served there until July 1st of last year when I was assigned to my present capacity in our central office in Detroit.

[fol. 890] Q. Prior to the receipt of the letters in mid-December from Mr. Roche and Mr. Staley, were you aware of any announced policy of General Motors as to the dealers' use of discount houses as sales outlets?

A. No, sir, I was not.

We had a basic policy at that time that a dealer could sell to anyone, wherever he might happen to live, at any price that he was able to negotiate with the dealer.

Q. Now, did you have a policy at that time about so-called bootleg sales, sales to unauthorized persons for resale?

A. Yes, sir, we did.

[fols. 891-893] While we didn't like bootleg sales—and we certainly didn't condone it and whenever the occasion arose where a bootleg sale was brought to our attention, we talked to the dealer and attempted him—attempted to persuade him to cease this practice, at the same time telling him, of course, that he is entitled to sell his cars to whom-ever he wants.

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[fol. 894] Mr. Hansen: I also spoke to Mr. Blecher, and he has made the same stipulation with us, that the affidavit of Tom Carroll might be introduced and filed as a part of Stipulation 7, Appendix B.

As I understand, he is waiving any cross examination of Mr. Carroll and we will not call Mr. Carroll, but my understanding is that if we did call him he would so testify, as set forth in the affidavit.

The Court: His affidavit will be accepted as his testimony in view of the fact it is so stipulated to, and I take it you say you do not wish cross examination.

Mr. Blecher: We do not.

[fol. 895] The Court: Very well. It will be filed as a part of the evidence in this case.

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[fol. 896] By Mr. Mitchell:

Q. When we recessed at the noon hour you had told me what your policy had been, so far as you knew, of the boot-leg sales prior to July 1960. Had you heard anything in the Los Angeles area about the discount—about dealers selling to or through discount houses?

A. Well, I had heard very little about it, Mr. Mitchell. I believe a couple of the city managers had mentioned to me that some of their dealers had talked to them about it. They wanted to know what to do, what they should do.

I told them that all they could do would be to talk to the dealers and try to persuade them to cease doing business with discount houses, that it was detrimental to our product and detrimental to Chevrolet and to them, and that while they were entitled to sell their cars to whom they wanted to, we still did not condone it.

Q. Now, this matter of dealers holding on to title and [fol. 897] using discount houses as an outlet to sell their merchandise, had that come to your attention at that time?

A. No, it had not.

Q. Do you recall a meeting in about July of 1960 with a number of dealers that belonged to the Losor Dealers Association?

A. Yes, I recall that meeting.

Q. And do you recall what dealers were present?

A. I can tell you some of them, I am not sure I can tell you all of them.

I believe this meeting came about by a phone call that I had from, I believe, Don Steves, a dealer down in LaHabra.

Q. What did he say?

A. Mr. Steves requested a meeting at which he said he would bring several other dealers, and wanted me to set up an appointment for them.

Q. Did he tell you what he wanted to talk about?

A. No, they did not.

So I accordingly arranged some time for them a day or so later, I don't know how much later, but a day or so later.

They came in and—

Q. Who came in?

A. These dealers came in with Mr. Steves.

.

[fol. 898] Q. He is a dealer in LaHabra, you say?

A. He is the dealer in LaHabra, and accompanying Mr. Steves were Mr. Henson—

Q. Where is he the dealer?

A. He is the dealer at—one of the dealers in Long Beach.

Q. All right.

A. Mr. Barnett who is a dealer at Compton.

Mr. Keown, who is the dealer in Santa Monica—

Q. Venice, isn't he?

A. No,—yes, pardon me, in Venice.

Mr. Hessell, who is the dealer in El Segundo.

Mr. Cormier, another one of the dealers in Long Beach.

I believe Mr. Selman at Orange was with them.

I think also Mr. Swift from—from San Pedro was with them.

I believe Mr. Hopper, Mr. Eddie Hopper, from Garden Grove was with them.

[fol. 899] Q. Mr. Hopper is now deceased?

A. Mr. Hopper is now deceased.

Q. And was at the time of the criminal trial?

A. Yes, sir.

Q. All right. How about Mr. Cone?

A. Yes, Mr. Cone was with them.

Q. Which one?

A. Mr. — I can't remember his initials. We called him Red.

Q. Red Cone?

A. Red Cone. He is the dealer at Fullerton. And I believe his brother Abe is the dealer at Anaheim.

Q. Abe. Was Abe at this meeting?

A. No, I don't believe he was.

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[fol. 900] The Court: May I ask him—before you get to that, I would like to get one thing very clear in my mind, and I am not sure it is clear.

And that is how this meeting came about. Who was it, you said you talked to someone, who was it you talked to first?

The Witness: Well, Mr. Don Steves, your Honor.

The Court: Steves, that was my understanding. Where did this conversation occur?

The Witness: He is the dealer at LaHabra. And he called me on the phone to request time for these gentlemen who wanted to see me.

The Court: Yes. And did he come in to see you first?

The Witness: No, he did not.

[fol. 901] The Court: You had no—how much of a conversation did you have with him?

The Witness: Just that they had a problem that they wanted to discuss with me, and wanted time.

The Court: Did he indicate to you what the problem was?

The Witness: Not at that time, no, sir.

The Court: Did he tell you that he was bringing these other dealers at that time, too?

The Witness: He told me there would be several of them, yes, sir.

The Court: Did you set a specific time?

The Witness: I did, yes, sir.

The Court: All right. Thank you, counsel.

By Mr. Mitchell:

Q. Was there anything unusual about a dealer or dealers calling on you?

A. No, Mr. Mitchell, this is a very frequent occurrence.

Q. Even several dealers at a time call on you?

A. Quite often, yes, sir.

Q. All right. And now—

The Court: The reason I asked you, I was wondering if it isn't customary to see what the man wants to talk about.

[fol. 902] The Witness: Well, he probably did say what it was about, and as I recall he said we just have a problem that we want to talk over with you.

[fol. 903] The Court: Well, oftentimes, I take it, businessmen—I have done the same thing—will say, "Never mind what the problem is, we will put that before you when we see you," realizing the inefficacy of the telephone.

The Witness: Yes.

The Court: I was wondering if anything was said at all as to why they were coming in.

The Witness: I don't believe they told me why they were coming in.

The Court: All right.

By Mr. Mitchell:

Q. When they got there, what was said?

A. They told me they were disturbed about certain Los Angeles dealers supplying cars to certain of the discount houses in Orange County. They were registering a complaint, really. They had, as I recall, an order they had placed or that somebody had placed with one of the discount houses in Orange County.

They had a tape recording which purported to be a recording of a conversation between somebody and the discount house representative. Unfortunately, this tape was unintelligible and I was able to get nothing out of it.

They did not seem to be too well informed, except that they did name some dealers in Los Angeles who they claimed were supplying cars to discount houses in Orange [fol. 904] County.

Q. Whom did they name, if you recall?

A. I think I can recall at least some of them, Mr. Mitchell. I believe they named Bruder and Biggs and Citizen Chevrolet at Eagle Rock, Courtesy Chevrolet. I believe Allen Gwynn Chevrolet in Glendale. I believe they also mentioned Ernie Porter Chevrolet in Pasadena.

Q. To identify these others, Biggs is at Second and Vermont?

A. He is at Second and Vermont, and Bruder is in Hollywood.

Q. Courtesy is at Western and what?

A. Ninth and Western, I believe.

Q. All right. They said they had a complaint. Did they say what their complaint was?

A. Yes, just that these dealers were supplying cars to the discount houses in Orange County and they felt that this was something that shouldn't be done, and they asked me what I was going to do about it, and they asked me what Chevrolet was going to do about it.

Q. What did you tell them?

A. I told them that there was very little I could do about it. That dealers were permitted to sell their cars to whomsoever they wanted to and I saw nothing here that was any different than that. I told them that I didn't condone supplying cars to discount houses in Orange County. [fol. 905] We didn't think it was good for our business. We thought it

was bad for our business. And I told them also that I would talk to these supplying dealers.

Q. Did you tell them what you were going to say to the supplying dealers?

A. No, sir, I did not.

Q. Did you know the details of how the supplying dealers were doing business with these discount houses? Whether there were sales to the discount house or a sale by the dealer through the discount house.

A. No, I did not. Mr. Mitchell, they didn't seem to have any information that was very conclusive, either. Actually, their complaint was just a matter of supplying cars to discount houses.

Q. Did you talk to any of these supplying dealers?

A. Well, not at that time. We were quite busy at that time with the Democratic Convention that was being held here in Los Angeles. A good part of my organization was devoted to taking care of some 250 cars that were being utilized in connection with that convention. And then in the—I believe in the last half of July, the month of July and the first few days of August I was on vacation, so I didn't do anything about it until I returned from vacation.

Q. What did you do then?

[fols. 906-907] A. I instructed the city managers to talk to these dealers that had been mentioned in the meeting in July as being the suppliers of the cars in the discount houses in Orange County, and asked them to contact them and try to persuade them to stop supplying cars to these discount houses.

At the same time telling them that while we didn't condone this kind of an operation, that they could sell to whom-ever they wanted to sell to.

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[fol. 908] Q. Now, the record shows in Government's Exhibit No. 6 a letter of Mr. Keown's to Mr. Biggs, that you had a golf game with Mr. Keown, Mr. Hessel and Mr. Biggs.

A. Yes, sir.

Q. Who arranged that game?

A. I believe Mr. Keown invited me to attend that game.

Q. Did you know that game had anything to do with any discussion about discount houses?

[fol. 909] A. No, sir, I did not.

Q. Just golf.

A. Just golf.

Q. You played golf?

A. Yes.

Q. Or at it.

A. We played golf that day at the Riviera Country Club. Mr. Keown is a member there, I believe.

Q. Was there anything after the golf game—was there anything said about the discount house problem after the golf game?

A. Yes, after the golf game we sat down to a drink or two before showering and going home, and Mr. Keown brought up the subject of discount house activities with Mr. Biggs.

Q. Mr. Biggs was one of those that were supplying cars to discount houses?

A. Yes, sir, he was. Mr. Biggs was a member of this foursome as was Mr. John Hessell, a dealer in El Segundo, I believe.

Q. He was one of these complaining dealers?

A. Yes, sir, he and Mr. Keown both.

Q. All right. What was said?

A. It was a discussion between Mr. Keown and Mr. Biggs principally. I don't recall that John Hessell entered into [fol. 910] the discussion very much at any rate. A very friendly discussion between the two of them about this type of business, with Keown taking the position it was not a good thing and Biggs taking the position that it hadn't been so bad, although he recognized, I am sure, that—

Q. What did he say?

A. Well, I think he just tried to defend himself a little bit, although it was a very friendly discussion. There was no heated argument or anything like that. The conversation didn't last too long. I don't think it lasted over 10 or 15 minutes.

Q. What did you say during this exchange?

A. Well, Mr. Mitchell, I didn't enter into that discussion because I had already had a meeting in July with that group of dealers I mentioned earlier.

Mr. Biggs had been contacted, I am sure, by one of our city managers and there wasn't anything I could add to their conversation that would be beneficial to either one of them, so I didn't enter in the conversation.

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[fol. 911] The Court: Well, now, if you wouldn't mind telling me, were you deliberately avoiding it at that time because you didn't want to get caught between the two, or into the arguments because you weren't certain of your position?

The Witness: Well, I think probably, your Honor, it was a combination of the two. I don't like to get caught into any argument between two dealers, and at this time we were looking at this thing without too much information available to us.

The Court: In other words, what you are saying to me is that you were more or less avoiding any conversation intentionally?

The Witness: I was, your Honor.

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[fol. 912] Q. I call your attention, Mr. O'Connor, to Government's Exhibit No. 17, which is a letter from Fred Thompson, who was one of your city managers—or memorandum, really, from Fred Thompson to you, in which he—this is dated November 17, 1960, in which Mr. Thompson says that Mr. Mays—Mr. Mays is your assistant sales manager for Chevrolet in charge of the West?

A. Yes, sir.

Q. That Mr. Mays had talked to Mr. Thompson in your—Mr. O'Connor's—absence on the subject of discount houses in your area.

He mentioned specifically that John Connell—do I pronounce that right?

A. Connell.

Q. —John Connell had written Mr. Staley on this subject—Mr. Staley is the general sales manager of Chevrolet?

[fol. 913] A. Yes, sir.

Q. And just this morning Mr. Cole received the attached wire from the salesman of Selman Chevrolet in Orange

County. Mr. Mays requested that someone in top zone management meet with the dealer and the salesmen at Orange, either today or tomorrow, and review our position with respect to this type of operation with them, and also to see if they could furnish any additional information about the discount houses that we do not already have.

He also states that Mr. Mays requested that you furnish him a detailed report of the discount house operations in this area, and specifically requested information as to the dealers who are furnishing merchandise to the discount houses, as well as what action we in the zone are taking to curb such sales.

He stated that this matter had reached such proportions that central office wished to review the entire matter, possibly with the legal department, to see if they could be of some assistance to us in this connection.

Mr. Thompson says: "I discussed this matter with Mr. Cash so that he would be informed and sent the attached teletype to Mr. Mays—" which is the teletype from the Selman salesmen.

[fol. 914] A. Yes.

Q. All right. Did you meet with the Selman salesmen?

A. Yes, I did, Mr. Mitchell. I got this phone call from Mr. Thompson while I was in San Diego conducting a dealers' meeting down in San Diego.

Mr. Thompson relayed the information that he had taken from Mr. Mays. And I told Mr. Thompson that I would go to Orange before coming back to Los Angeles and hold this meeting with Howard Selman's salesmen, sales people.

Accordingly, when I left San Diego, when I completed my meeting there and left, I went directly from there to Orange, after having called Mr. Selman and told him that I was coming up, to have a meeting with the salesmen. He asked me what it was all about and I told him I would tell him when I got there.

When I reached Orange Howard had his salesmen present.

Q. Howard Selman?

A. Howard Selman had his salesmen present. When I told him that I was there to—

Mr. Mitchell: The hummingbird is here.

The Court: I see the air is back on now, gentlemen. So you can put up your oxygen tanks.

The Witness: I told him I was there to discuss with his [fol. 915] salesman a wire that they had directed to Mr. Gordon, I believe it was. He was very much surprised because he knew nothing about this wire. He was also somewhat incensed that his salesman would directly wire to Mr. Gordon without him knowing about it.

At any rate, Mr. Selman assembled the salesman and I told the salesman that I was there to discuss the wire that they had sent to Mr. Gordon, was going to discuss it with them.

I told them I was sympathetic with their problem, I knew what they were up against, I knew they were a little bit riled up about it, but that right at the moment there was very little I could do, that this entire matter of discount house selling had been referred to our management in Detroit and that we would normally expect to receive some sort of policy applicable to it.

By Mr. Mitchell:

Q. Well, in the—in the exhibit, Government's Exhibit No. 17 that I read a portion from to you, mention was made of a report. And you did—you did prepare a report to Mr. Mays?

A. Yes, sir, in connection with Mr. Mays' conversation with Mr. Thompson, who was one of the city managers. He had requested an immediate report giving whatever information we could on the discount house situation in Southern California.

[fol. 916] Q. All right. Now that report is in evidence, Mr. O'Connor, as Government's Exhibit No. 22 which I place before you (placing exhibit before witness).

A. Yes.

Q. This indicates some additional knowledge than you have heretofore given us about who these supplying dealers are, and how they do business. Where did you get that additional knowledge?

The Court: Maybe you had better read that, counsel, part of it anyway, so I will sort of have the key.

Mr. Mitchell: All right. This, of course—

The Court: You don't have to read it all.

Mr. Mitchell: No, no——

The Court: Just the part——

Mr. Mitchell: No, it starts out:

“This is with reference to your telephone request regarding the discount house operation in Southern California. This business is commonly known among dealers as referrals, and has existed in the Los Angeles zone for the past eight years and the sales on the part of discount houses are not confined exclusively to Chevrolet products, but rather on an industry basis.”

[fol. 917] Q. Now, when you say “for the past eight years,” this must be something that you found out, or knew, because you said you didn't know much about discount house selling.

A. Well, that is correct. After I got this notice from Mr. Thompson that Mr. Mays wanted as much information as he could get as quickly as he could get it, I had my own organization, including the three city managers and the assistant zone manager, plus some of the department heads, plus some of the district managers get together all of the information that they could supply me with respect to this discount house picture.

[fol. 918] Q. And this is the information that you are giving to Mr. Mays in this letter?

A. Yes, sir.

Q. So then follows discount houses that you name as the prominent ones in the next paragraph, and you say:

“This type of business on strictly referral basis is frequently quite profitable to the dealer who has only one account and contains control of all deals. This, however, is in contrast with the consignment type of operation where the discount house itself handles the transaction. Reference to the attachment will indicate the gross profit differential.”

What do you mean by sales on a referral basis? What information did you have then, at least?

A. Well, this information that I had here on the referral basis was the type of business that was being conducted by

Warren Biggs on Vermont and Fritz Bruder up in Hollywood.

Now, this is in contrast to what was reported to me as being a consignment type of operation, where there were cars at the discount houses on display and still with the dealers' stickers on the cars.

Some of this information on this letter, it later developed, was somewhat inaccurate because we found they were not [fols. 919-921] on consignment exactly. They were cars that belonged to the dealer but they were not on consignment. They were down there for display, and that was it. They still belonged to the dealer.

Q. You didn't describe in here the Chico type of operation you heard me describe to the court?

A. No, no, Mr. Mitchell. I don't believe at that time that we had very much information on Mr. Chico's method.

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[fol. 922] Q. Your letter says:

"Our dealer associations have formed a committee to call on the supplying dealers and have asked them and have attempted to persuade them to discontinue this practice."

Where did you get that information?

A. Mr. Keown called me—I believe it was Mr. Keown called me and told me that this is what they planned to do, was to have a committee call on the supplying dealers.

Q. It also says:

[fol. 923] "Associations have also appointed a legislative committee to seek legislative action which would prohibit this type of merchandising."

Where did you get that information?

A. I think I got this information from, I believe, Don Steves, the dealer at La Habra. He called one day about this matter or something else. At any rate, he told me about this at this time, that the Losor Association, I believe, had retained a Cameron Aikens, a local attorney, of the firm of Getz, Aikens & Manning, to check into whether or not this discount house selling was violating any of the state

licensing laws, and also they had hoped to ask a man, I believe his name was McCarthy, who was head of the DMV, the Department of Motor Vehicles, at that time to come down and discuss it with Mr. Aikens. What happened on it I do not know.

Q. That is, the dealer associations weren't reporting back to you on what happened in respect of the legislative program?

A. They were not, sir.

Q. Or in respect of what happened in any program to call on other dealers?

A. I do not know whether they ever called on any other dealers or not.

Q. They didn't report to you?

[fol. 924] A. They did not, sir.

Q. Or report to any of your men, insofar as you know?

A. No, they did not.

Q. The next paragraph says, "Our experience in shopping at the discount houses, from the standpoint of policy and warranty work, indicate our regular policy and warranty booklet is furnished with each purchase and the customer is told that any Chevrolet dealer will honor the warranty and correct any defect."

Where did you get that information?

A. I got this from my own people, Mr. Mitchell, and they got the information, of course, from some dealer. They referred this to us.

Q. You weren't doing any shopping?

A. No, we were not.

Q. At the bottom of page 2 of this letter you say, "We also refer you to our letter and attachments of November 16th to Mr. Grieg regarding an apparent patent infringement on the part of Fore"

F-o-r-e is one of the discount houses, right?

A. Yes, I believe it is.

Q. Now, let me show you an advertisement—there are four and it is Attachment 11 to Stipulation No. 2, which has been admitted in evidence as Defendants' Exhibit AA. [fol. 925] Because this photostatic copy of this advertisement of Fore's is not too legible, I would like you to tell me whether or not the representation of Chevrolet there is the Chevrolet trademark insignia.

A. Yes, it is. It is our trademark insignia.

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[fol. 926] Q. On page 3 you mention the fact that you have:

“ * * * reviewed the problem with the sales organization at Selman Chevrolet * * * ”

That is the meeting that you described a few moments ago, right?

A. Yes, sir.

Q. And you mention the fact that you instructed your assistant zone manager to discuss the problem with Tommy Ayres Chevrolet?

A. Yes, sir. I would have discussed this matter with Tommy Ayres Chevrolet salesman myself, except that I had to be out of the city for some reason or other. And I asked Jere Faust, our assistant zone manager, to go down and talk with them and cover the same material that I used in discussing the matter with the salesman at Orange. And [fol. 927] I gave him the notes that I had made on the matter so that he could stick with those notes.

Q. You mentioned in the letter of November 22nd:

“ * * * reference to the attachments will indicate the gross profit differential * * * ”

And you had attached to this memorandum to Mr. Biggs the Keown letter to Biggs, did you?

A. The Biggs letter to Keown, yes, sir.

Q. No—the Biggs letter to Keown, excuse me.

A. Yes, sir.

Q. And that had information about the gross profit differential in there?

A. That is what I was bringing his attention to, yes, sir.

Q. Now, you used the plural word “attachments,” can you remember what other attachments you had with that letter?

A. I believe, Mr. Mitchell, that I attached a couple of ads that had been running in the papers by the discount houses. Now, I can't identify the discount houses exactly, but I

think I attached a couple of ads, where they were advertising new Chevrolets for sale.

Q. All right. Now, on December 19, 1960, you received a letter dated December 17, 1960, from Martin Pollard? [fol. 928] A. Yes, sir.

Q. Martin Pollard is a Chevrolet dealer?

A. Yes, he is a Chevrolet dealer in the San Fernando Valley, also an Oldsmobile dealer and a Cadillac dealer.

Q. On that point he tells you about a meeting of dealers at Perino's, and he says in the letter, in the last full paragraph—here, I have the paper, it isn't necessary to show it to you, I think:

“* * * out of this meeting was born a committee instructed to take certain measures as directed. The chairman elected was Cap Reade. He intends to see you at once, I suppose he has by now, and explain to you the objective of the committee.”

Did Cap Reade ever come to see you and explain anything about the committee?

A. No, Mr. Mitchell, Cap Reade never came to me and never asked to see me. I didn't see him at all.

Q. Now, I will show you—

The Court: Before you get to that, may I ask you—I notice it says here on Exhibit 22 in the—I thought I saw somewhere in that letter about a conversation or rather a statement to the effect that some of the dealers were saying they would not service these cars. Didn't I see that somewhere [fol. 929] in that exhibit?

Mr. Blecher: The middle paragraph, your Honor.

The Court: Thank you. Here it is.

“Many dealers, however, will not service new cars purchased through discount houses resulting in unhappy owners.”

Did some of the dealers refuse to service these cars?

The Witness: Your Honor, I don't believe they refused to service them. But it was reported to me by some of my district managers—and I believe the assistant zone manager—that this doesn't take the form of a direct refusal. It simply takes the form of telling the customer who purchased

his car through or from a discount house, that they can't get him into the shop until, let's say, a week from next Friday. And their own customers come first and their shop is busy and they can't get him in.

So it was reported that some of the customers were unhappy that they couldn't get service.

The Court: Well, tell me, do I understand that that would be a violation of some kind of the contract? Would it be a violation of the contract on the part of the dealer to refuse to service any Chevrolet car at any time?

[fol. 930] The Witness: I don't know whether it would be a violation, your Honor, I—

The Court: Well, would you consider it as—

The Witness: We would consider it as a serious thing with respect to a dealer turning a customer down from servicing a new Chevrolet.

The Court: No matter where he bought it, is that right?

The Witness: Yes, sir.

The Court: I suppose though if I went to Portland and they saw the California license on it and it was a choice between me and a local resident, normally they would give the local residents the break, wouldn't they?

The Witness: I think you will find that normally dealers in areas where there is a high transient population, such as vacationers, that they are pretty well geared up to take care of the transient owners.

But in this case, while it didn't take the form of a direct refusal, it was just kind of a brush-off.

[fol. 931] The Court: Well, that is the same thing.

The Witness: Yes.

The Court: Isn't it?

The Witness: Yes, sir.

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[fol. 932] By Mr. Mitchell:

Q. I show you now, Mr. O'Connor, Government's Exhibit No. 117, which is a memorandum from Mr. L. H. Averill to you, dated December 16, 1960, which has a stamp "Received December 21, 1960."

Mr. Averill was the assistant general sales manager of the Chevrolet Motor Division?

A. He was executive assistant general sales manager at that time.

Q. I see. Can you say that this was the first information that you had with respect to the adoption of the position of General Motors stated in Mr. Roche's letter?

A. Yes, sir, I believe this was the first information I had.

The Court: Now, that is Exhibit?

Mr. Mitchell: 117.

The Court: Yes. All right.

By Mr. Mitchell:

Q. Describing the activities that are involved, or, rather, [fol. 933] referring to the activities of discount houses that are involved, he attaches a list of the senders of letters and telegrams, and identifies those that are being answered by Mr. Staley, the Chevrolet general sales manager, and those being answered by Mr. Roche?

A. Yes, sir.

Q. And then it contains a direction to you, which seems to be marked on this copy with a pencil.

Do you know what that pencil mark or pen, or something else, marking this last full paragraph is?

Is that anything you recognize, that mark?

A. Yes, I think these are my brackets (indicating) where I put this particular paragraph in brackets.

Q. To call it to your attention?

A. Yes, to make sure I gave it attention.

Q. And this says, "We would like to especially call your attention to the following paragraph from Mr. Roche's letter: 'The wholesale organization——'"

That is your organization?

A. Yes, sir.

Q. "The wholesale organization of each of our divisions will give special attention to these problems. They propose to personally discuss this matter with each of their dealers and ask them to review their operations in the light of the critical nature of the problem, [fol. 934] as it affects the goodwill of the products they sell, the entire franchise system of distribution, and the validity of any arrangement they may have with a

discount house under the provisions of their General Motors Dealer Selling Agreement.' "

Then it goes on:

"In accordance with this paragraph will you please arrange through the medium of yourself, city managers and assistant zone managers to personally contact each of the dealers in the Los Angeles area, to discuss the subject matter of the above paragraph. We feel that these contacts will also serve as a reply to the letters——"

Excuse me.

"—a reply to the dealers and their salesmen, who have not written Mr. Cole, Mr. Staley or Mr. Gordon. After these contacts have been completed by zone management we would appreciate your advising the office of the results of your conferences."

[fol. 935] Did you regard this as anything new in your relationship with dealers, in respect of the discount house problem?

A. Yes, I did. I recognized this as a policy on the matter of selling—of dealers selling cars through discount houses.

I recognized then this could involve a possible violation of their selling agreement.

Q. I call your attention now to Defendant's Exhibit—excuse me—Government's Exhibit 121, which is a letter dated December 29, 1960, from Mr. Staley, as general sales manager, attaching a copy of a letter sent to all Chevrolet dealers dealing with the matter of discount house operation.

Did this letter and the one addressed to the dealers come to your attention?

A. Yes, sir, it did.

Q. Shortly after this communication from Mr. Averill?

A. Yes, this communication from Mr. Averill came first and this letter followed immediately thereafter.

Q. Did you have a complete copy of the Roche or Staley letter before you received Government's Exhibit 121?

A. Yes, sir, I did, because with this letter from Mr. Averill, dated December 16, 1960, Mr. Averill attached a

copy of the reply that was going to go to the dealers who had written to Mr. Cole and Mr. Staley.

[fol. 936] Q. So that you had knowledge of the particulars of the Roche and Staley letters at about the same time that you received the Averill memorandum of December 16, 1960?

A. That is correct, sir.

Mr. Mitchell: All right. Now, we asked during the trial to mark and there was admitted in evidence Defendants' Exhibit CD.

Q. Was this actually the piece of paper that you received at that time, at the time of the Averill memorandum?

A. Yes, I believe this is the actual letter I received. It has a red pencil bracket around certain portions of the letter which, I believe, I put there.

Mr. Mitchell: Now, this letter, except for the pencil brackets, is identical with the Government's Exhibit 116, your Honor, if you care to refer to it.

The Court: Well, this is the December 16, 1960, letter?

Mr. Mitchell: Yes, this is the one from—

The Court: This is called the Keown copy.

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[fol. 937] By Mr. Mitchell:

Q. How do you tell it is the copy you actually received?

A. Well, there is a copy indicated to me and the red marks and the red brackets that I put around certain paragraphs indicate to me that this is the copy I got.

Q. All right. Why did you put marks around, red marks, around the paragraph?

A. Well, I felt that these paragraphs that I indicated with the red marks were quite important paragraphs with relation to this discount house problem.

I particularly wanted to emphasize the city managers and the assistant zone managers at the time I met with them in accordance with Mr. Averill's instructions, that I particularly wanted to emphasize these particular points.

Q. Well, did you give each one of these city managers and your assistant zone manager a copy of a letter like this with the red marks?

A. Yes, sir, I did.

[fol. 938] By Mr. Mitchell:

Q. All right. Well, the things that you have indicated as being—did you say anything to them about what these red marks meant?

A. Yes, sir, I did. In fact, when I held a meeting with them I read that entire letter to them and with them, and marked their copies with red indicating the particularly important parts of it, although we regarded the whole letter as being very important.

Q. And what were they to do with respect to these particularly important parts?

A. They were to follow instructions, and in the—and contact all of the dealers in the metropolitan area, the dealers in the San Diego metropolitan area and all of the fringe dealers surrounding Los Angeles. And they were to discuss this letter with the dealers and try to persuade them to cease selling through the discount houses, if they were doing it, to make sure that the dealer had read the letter and that he understood the letter and that if he had any questions about the letter they were to try to answer them. And if they couldn't answer them they were to refer them back to me.

And then I also asked them to get the dealers' reaction to the letter, and what the dealer would do after he had reviewed his operation in the light of these factors that [fols. 939-942] are indicated in the letter.

* * * * *

[fol. 943] Q. Now, you have that marked. The para-[fol. 944] graph reads as follows:

“The procedure whereby some discount outlets, which offer new cars for sale, make a deal with a customer, and then, as prearranged with an authorized dealer, turn the transaction over to that dealer for closing and delivery of the vehicle, is being improperly characterized by some selling dealers as a ‘referral.’ Such arrangements, however, are far different from the casual practice in the industry whereby salesmen encourage referrals from friends and others who

chance upon a prospective new car customer. The reports we have received indicate that these discount outlets are advertising new cars for sale at established business locations, frequently far removed from the location of the selling dealer. In effect, they in some instances represent the establishment of a second and unauthorized sales outlet or location contrary to the provisions of the General Motors Dealer Selling Agreements."

Now, that is a paragraph which you thought indicated that this discount house business could be a violation of the Dealer Selling Agreement?

A. That is correct, sir.

Q. This is something brand new in your instructions [fol. 945] with respect to unauthorized outlets?

A. I had had no such policy prior to the time this letter came out.

Q. Then down at the bottom of page 4 you have a paragraph running over to page 5 marked, which says:

"The wholesale organization of each of our Divisions will give special attention to these problems. They propose to personally discuss this matter with each of their dealers and ask them to review their operations in the light of the critical nature of the problem as it affects the good will of the product they sell, the entire franchise system of distribution, and the validity of any arrangement they may have with a discount house under the provisions of their General Motors Dealer Selling Agreement."

That is the paragraph that was quoted in Averill's memorandum?

A. Yes, sir.

Q. Now, what discussion did you have with your subordinates, your city managers and your assistant zone manager in regard to the program which Mr. Averill had directed you to follow, and which you started implementing by marking copies of Staley's letter and handing them to these subordinates of yours?

A. Mr. Averill had requested that we especially cover

[fol. 946] that particular paragraph, the last paragraph that you referred to.

And as I mentioned earlier, I had a conference with the city managers and the assistant zone manager during which I read this letter to them and with them. I instructed them in their contacts with their dealers to stay as closely as they possibly could to the terms of this letter, and that they were to try to persuade the dealers who were selling through the discount houses to cease.

I also asked them at that time if they found any questions any dealer didn't understand the letter, they were to answer his questions if they could, and if they could not answer the question they were to refer it to me.

I also asked them at the time they discussed this letter with the dealer, in accordance with Mr. Averill's instructions, that they were to get the dealer's reaction, or feeling, to this policy as expressed in this letter. And that if it happened to be a dealer whose business did include a relationship with a discount house they were to ask him to review his operation, just as this one paragraph says, and then give them a decision on it as to what he intended to do.

Q. Why didn't you tell each of these dealers that he [fol. 947] was violating his contract and he had better stop or his contract would be terminated?

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The Witness: Well, Mr. Mitchell, first of all I had no such instructions in the letter from Mr. Averill. The general letter of Mr. Staley didn't suggest any such [fol. 948] thing.

Further than that, it is not within my province—

The Court: You didn't have the authority.

The Witness: Exactly, your Honor. It is not within my province to determine whether or not a dealer is in violation of his selling agreement and he is going to be terminated.

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By Mr. Mitchell:

Q. When you discussed the matter with your city managers and your assistant zone manager, did you tell them whether to meet with dealers individually, or in groups or how?

A. They were instructed to meet with dealers individually, in every case.

Q. Did you have any discussion—withdraw that. Roy Cash is the regional manager, is he not?

A. He was at that time, yes, sir.

Q. He was at that time?

A. Yes, sir.

Q. And was he your immediate superior?

A. Yes, sir.

Q. He was in Oakland?

A. Yes, sir. His offices are in Oakland, California.

[fol. 949] Q. And had he ever been the zone manager in Los Angeles?

A. Yes, sir, he was zone manager here in 19— the latter part of 1954, '55 and 1956.

Q. So that he would be acquainted with most, if not all of these dealers?

A. I think you could say he was acquainted with all of them.

Q. Did you have any discussion with Mr. Cash about his playing a part in this program of calling, or carrying out Mr. Averill's instructions?

A. Yes. Mr. Cash called me and told me that he—he wished to have a conference with the dealers who were engaging in business with the discount houses.

Q. You mean as a group?

A. No, no, individually.

Q. He wished to have a conference with each of those dealers?

A. With each of those dealers. He asked me if I would set up these conferences, I believe, on the basis of an hour, or an hour and a half apart.

Accordingly I did set up those conferences for him, I believe in the week between Christmas and New Year's.

Q. When did these conferences take place, so far as [fol. 950] you know, between your subordinates, and between Mr. Cash? You have just said between Mr. Cash

and each of these dealers between Christmas and New Year's. How about the city managers and the assistant zone manager?

A. I believe their contacts with the dealers that they called on and the area that the dealer was located in that they were responsible for took place after the first of the year.

Q. Did Mr. Cash report back to you the results of his conferences between Christmas and New Year's?

A. No, he did not. He simply told me that he had been well received and was well pleased with his conferences. That is all he told me.

Q. Did your zone personnel, the city managers and the assistant zone manager report back to you on the result of their conferences?

A. Yes, they did, Mr. Mitchell. And they reported to me that all of the dealers that they contacted, that were doing business through discount houses, had told them that they were going to stop it.

All of those dealers who were not doing business with the discount houses had also told them that they had no intention of getting into that type of business, without exception.

[fol. 951] Q. Now, I will show you Government's Exhibit No. 127. This is a memorandum from you to Mr. Averill dated January 17, 1961. That is your report to Mr. Averill on the results of these conferences that you had had?

A. Yes. In Mr. Averill's letter of December 16th he had requested that I report to him directly concerning the results of our conferences. This is my report to him dated January 17th.

Mr. Mitchell: This letter reads, if I may read it—

The Court: Yes, indeed. As a matter of fact, counsel, read what part of it you desire. You don't have to read all of it.

If counsel, other counsel wants to read other parts, he may do so.

Mr. Mitchell: It says:

"Dear Mr. Averill:

"Our letter is in reference to your letter of December 16, 1960, to which was attached copies of the replies

made by Mr. Staley and by the corporation to dealers and salesmen in the Los Angeles zone concerning the above-mentioned subject."

The subject mentioned being, "Sales to Discount Houses, Referrals" and so forth.

"In accordance with your instructions we have per-[fol. 952] sonally contacted each of the dealers in the Los Angeles Metropolitan Area, the Orange County dealers, the fringe dealers surrounding the Metropolitan Area, and those in the San Diego Metropolitan Area. We have discussed with them the subject matter of the excerpts you quoted, taken from Mr. Staley's letter."

By the way, Mr. O'Connor, at that time no part of Orange County was a part of the Los Angeles Metropolitan Area?

A. No, sir. I believe that we enlarged our Metropolitan Area to take in the Orange County dealers on April 1st, 1961.

Q. To be strictly accurate, to take in the Orange County dealers in the western—no, in the part of Orange County between the Los Angeles County Line and Laguna?

A. Yes, sir. I believe Laguna is not included.

Q. Not included?

A. Yes, sir.

Q. How about San Clemente?

A. I believe San Clemente is not included.

Q. I am too far, down to Newport then, and then in the areas of Santa Ana, Garden Grove, Anaheim, Fullerton, LaHabra, and so on.

A. As I recollect, all the Orange County dealers, with the exception of Laguna, were brought into the Metropolitan Area at that time, along with some other dealers in Orange [fol. 953] County, on the eastern edge of Orange—or on the eastern edge of Los Angeles County.

Q. This letter goes on to make the report—that is, Government's Exhibit 127—

"Our contacts were extremely well received and I believe this action, together with the letter they received from Mr. Staley, will materially alleviate the serious concern that has been evident on the part of

many dealers. We do feel, however, that complete correction of the problem will require constant scrutiny and follow-up on the part of all of us in the Los Angeles zone. This we are currently doing.

"Our dealers and wholesale personnel alike appreciate very much the position our management has taken on this matter."

Now, you refer to "constant scrutiny and follow-up" and say, "This we are currently doing."

What do you mean by that?

A. Mr. Mitchell, I had asked the city managers and the assistant zone manager to particularly—to be particularly observant in their contacts with the dealers who had previously been engaged in selling through discount houses, and if they saw it was continuing, they were to report back to me.

[fol. 954] Q. That is what you mean by the "scrutiny and follow-up"?

A. Yes, sir.

Q. What were you going to do then?

A. Well, I would have recontacted the dealer and again reviewed Mr. Staley's letter with them.

Q. Did you recognize in a big area with many large dealers that possibly sales could get away from the dealer without his knowledge and the product be put out through a discount house?

A. Yes, this has occurred in a good many cases. In dealerships in the Los Angeles metropolitan area the bulk of them are rather large dealerships.

I don't believe that any dealer can personally check each deal that is made. Some of them sell four or five hundred cars a month.

I know it is possible for a car to get into some channel unknown to the dealer. This is a very common occurrence. I recognize this.

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[fol. 955] Q. Why did you want to have your people keep their eye on the supplying dealers?

A. Because, Mr. Mitchell, I felt that it was quite within [fol. 956] the realm of possibility that this could continue

unknown to the selling dealer, simply because they can't keep track of everything that goes out of their dealership.

Q. All right. Now, I would like to show you Plaintiff's Exhibit No. 134, which is a letter from Cone Chevrolet Company, by C. D. Cone, to you, dated January 26, 1961.

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Q. Red Cone writes a letter to you dated January 26th, right?

A. Yes, sir.

Q. And he says, "I am giving you the latest information as to what appears to be a flagrant violation of our dis-[fols. 957-958] count house agreement," right?

A. Yes, sir.

Q. Did you have any discount house agreement with Cone Chevrolet Company or Red Cone?

A. No, sir, we do not. The only agreement with Mr. Cone would be our selling agreement.

Q. Does this statement give you any idea of what kind of an agreement he is referring to?

A. No, I haven't the faintest idea what he was talking about.

Q. Was there anything that you had done up to that point, that you know of, that constituted any kind of a promise to Red Cone or Cone Chevrolet Company?

A. None whatever, Mr. Mitchell.

Q. Or did he make any kind of a promise to you outside of his Dealer Selling Agreement that you know of?

A. No, sir.

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[fols. 959-962] Q. Well, perhaps I should ask the question a little broader.

Do you know, outside of the Dealer Selling Agreements, do you know of any discount house agreement with any dealer?

A. We had no such agreement, Mr. Mitchell. The only agreement we have with our dealers is our selling agreement.

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[fol. 963] Q. Now, when you talked with those dealers, those Losor Dealers in July, 1960, and when you talked with Selman, the Selman Chevrolet, with the salesmen, were you trying to help out the dealer associations?

[fol. 964] A. No, indeed, I was not.

Q. Were you trying to help out the dealers?

A. No, no, sir. I was carrying out instructions that I had received from Mr. Mays through Mr. Thompson to discuss our position with the dealer salesman.

Q. How about in the case of July, 1960, the meeting that was had in your office? Were you acting then to do something for the dealers, or the dealer associations?

A. No, no, sir, I was not. This was a meeting that had been requested by Mr. Steves. I gave him the time that they wanted for the meeting. I told them that there was very little I could do about it. I didn't condone the idea but the dealers were entitled to sell to whom they wanted.

Q. All right. Now, when it came—came to these steps taken after the sending out of the Roche and Staley letters, and you ordered your people to have conferences with the dealers, were you then trying to help out the dealers or the dealer associations?

A. No, sir, I was carrying out the instructions that I had received from Mr. Averill, who was the executive assistant general sales manager, in explaining to the dealers a policy that we had not heretofore had.

Q. Well, what is the first that you heard about any shopping project of any of the Chevrolet dealers in the [fol. 965] Southern California area?

A. Well, I would say, Mr. Mitchell, that it was some time in January, probably after the 15th of January. I couldn't specify the date.

Q. This would be in 1961?

A. 1961, yes, sir.

Q. And from whom did you hear whatever you heard?

A. Well, I can't say for sure. But I think it was from—from one of the Losor group. I think maybe Keown, or Marion Johnson, or possibly Chet Henson in Long Beach. [fol. 966] Q. All right. Now, we have identified Mr. Keown as being the dealer at Venice.

Who was Chet Henson?

A. Chet Henson is a dealer at Long Beach and Marion

Johnson is his son-in-law who is a principal in the dealership.

Q. You think one of those three men mentioned this matter to you?

A. Yes, with the possible addition of perhaps Mr. Pollard. I couldn't tell you which one.

Q. Mr. Pollard has several Chevrolet dealerships in the San Fernando Valley?

A. Yes, at that time I believe he had an interest in three Chevrolet dealerships, two Oldsmobile dealerships, and a Cadillac dealership.

Q. Well, you can't remember which one spoke.

Do you remember whether it was over the phone or at a personal meeting?

A. No, it was over the phone.

Q. What did one of these men say to you?

A. Well, whoever it was—and I can't—I am sorry, I can't recall just who it was—told me that they were going to do some shopping of discount houses with the idea of developing some information that they could use in relation to a new licensing law they were seeking through the [fol. 967] State Assembly. That is about all I know about it.

Q. What did you say to that?

A. I just said, "O.K.," I guess.

Q. Did they ask you to do anything?

A. No, sir.

Q. Did you ask them to do anything?

A. No, sir.

Q. All right. What is the next you heard of this shopping activity that these dealers told you about or this proposed shopping activity?

A. Well, it was some time later than that, Mr. Mitchell. I believe in February either Keown, Johnson or Henson called me and told me they were doing some shopping and asked me if I would be interested in the information they developed, and I told them I would.

Q. You say they were doing some shopping. That is a many-meaning term. I suppose they didn't explain to you what they were doing, what shopping they meant, or did you understand what shopping meant?

A. I just understood them to mean they were going to shop a car through a discount house.

Q. You mean they were going to buy a car——

A. Yes.

Q. —through a discount house?

A. Yes, sir.

[fol. 968] Q. Was there any discussion about how this information would be conveyed to you, that they asked you if you wanted to receive?

A. No, no, there was no discussion at that time. They simply asked me if I wanted the information, and I told them I did.

Now, I don't believe at that time they had bought a car because there was no attempt on their part to volunteer any information at that point. They just said they were going to buy a car or shop a car through a discount house and wondered if I wanted the information, and I told them I did.

Q. Why were you interested in having information about cars sold through discount houses?

A. Well, Mr. Mitchell, our contacts with the dealers in relation to the Staley letter, every dealer without exception had told us that he was either going to stop doing business with a discount house or he had no intention of getting into it.

I found it difficult to believe at first that this could still be going on and yet I know these dealers out here pretty well and I know dealers pretty well generally across the country, and I know it is quite possible for a car to get away from a dealer without him knowing anything about it. So I wanted this information to go back to the dealer again [fol. 969] and again review this letter, this Staley letter or Roche letter, as you may desire, to again review it carefully with him and again try to persuade him to cease doing business through the discount houses.

Now, I felt that quite likely the dealer did not know anything about it, because a dealer, when he tells you he is going to stop doing business or he tells you that he has no intention of doing this kind of business, I take his representation as being a sincere and honest one.

I felt that they would want to know about it. I also felt that it was my job to go back to them and show them that

it was still going on in their place of business with or without their knowledge.

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[fol. 970] Q. What is the first you heard of any car being shopped by a dealer or dealer group, dealer association?

A. Well, the first time I heard about it, Mr. Mitchell, was when Mr. Dick Hawthorne, one of our city managers, came to me and told me he had a call from Ted Schonlaw of Schonlaw Chevrolet up in Hollywood.

He told me that Ted Schonlaw had called him and told him he had been shopped by, I believe, the Losor group, and that they had succeeded in buying a car through a discount house that came from his place of business.

He had told Dick Hawthorne that he had given strict orders against getting into this kind of business and that he wanted to repurchase the car. Dick Hawthorne asked me what he should do about it. I told him to do nothing about it.

[fol. 971] Q. What is the next you heard about this car?

A. Well, I think it was a few days later that I believe Marion Johnson of the dealership in Long Beach called me and asked me if he and Chet could come in and see me, wanted to know if I would be in the office.

I said, "Yes, come ahead." So they came on in to the office and they had with them documents indicating a transaction that they had made through a discount house.

This was a car that had been purchased through a discount house that came from Schonlaw Chevrolet. I can't tell you exactly what documents there were, but there was an invoice, I believe, from Schonlaw Chevrolet. They were probably the documents in relation to the title and license and possibly an order.

[fols. 972-975] Q. All right. Who was present at that conversation then beside Henson and Johnson and you, if anybody?

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[fols. 976-977] LOS ANGELES, CALIFORNIA, MONDAY, JUNE
22, 1964, 2:00 P. M.

* * * * *

[fol. 978] A. I don't believe that there was anybody else present when I discussed this matter with Henson and Johnson.

Q. All right. Now, as best you can remember—that is a long time ago—but tell me as best you can remember what they said and what you said in that conversation.

A. Well, I can't remember exactly what was said, Mr. Mitchell. They showed me these documents which reflected a purchase through a discount house from Ted Schonlaw Chevrolet.

I simply told them to let me have the documents, and incidental to coming in they had brought the car in and parked it on the parking roof where we have our zone office.

I told them to leave the car and leave the keys with me and I would take care of the sale of the car.

Q. Did you tell them how you were going to take care of the sale of the car?

A. No, sir, I didn't. It wasn't any of their business.

Q. Did you tell them anything about Schonlaw's call to Mr. Hawthorne?

A. It is quite possible I did. I don't recall exactly that I did. I may have told them that—this was a car that Schonlaw said he would buy back, but I don't recall telling them that.

Q. Now, this car belonged to Johnson or Henson or Losor, somebody. Did you know who it belonged to?

[fol. 980] A. Yes, they told me that this was a car that they had shopped on behalf of their Losor group. When I told them I would sell it I also asked them who they wanted the money to go to, and they said they wanted it to go to Cameron Aikens.

Q. Who is Cameron Aikens?

A. Cameron Aikens is an attorney of the firm of Getz, Aikens & Manning here in Los Angeles.

Q. Did you know anything about any connection he had with the dealer association?

A. Yes. I regarded this as a normal request. Mr. Aikens, I know, is an official, I believe, of their advertising associa-

tion and I think he handles quite large sums for them, so this didn't appear to be anything out of the ordinary.

Q. You say their advertising association. Will you just describe what you know about their advertising setup?

A. Well, they have a—at that time, at any rate,—I don't know whether they still have—they had a separate corporation which I believe was devoted entirely to advertising, which they called LFD. The "L" was for the Losor Association, "F" was for Foothill Association, and "D" was for Dealers' Service.—

I believe all three of the associations channel certain funds into this advertising corporation so they could do [fol. 981] principally, I guess, advertising for all of them.

Q. All right. Now, tell me, if you will, why you took charge of this car intending to offer it back to Mr. Schonlaw.

A. Well, I had known for, oh, two or three or four days that Mr. Schonlaw had been shopped and he had expressed a desire to Dick Hawthorne that he wanted to buy the car back, that he was not engaged in this type of business. He didn't know it had been sold through a discount house.

So I wanted to get back with Dick—with Ted Schonlaw or have one of the city managers get back with him and again cover with him the policy outlined in the Staley *later*.

Here was a situation where I don't believe Ted Schonlaw had any knowledge this car had been sold through a discount house. I felt that we should get back to him in the interest of implementing our program that had been outlined in our letter of December 29th by Mr. Staley, and I thought we would let Ted Schonlaw buy the car back since he expressed a desire to do so.

This was the way, perhaps, of getting it to his attention, and since he had expressed the wish to do so, why, I thought it was a pretty good idea.

Q. Were you trying to help out Losor?

A. No, no. I was simply trying to effect a program of [fol. 982] General Motors and Chevrolet and effect a program of my own in the Los Angeles zone.

Q. Can you fix the date of this conversation with Mr. Johnson and Mr. Henson at all, Mr. O'Connor?

A. Well, I believe it was along about February 22nd, 23rd, or 24th; somewhere along in there.

Q. This was in 1961?

A. Yes, sir, 1961.

Q. Now, on that same day did you have any conversation concerning a car purchased by John Armour for Eddie Hopper Chevrolet?

A. Yes, I did.

Q. Mr. Armour—was that before or after the Johnson-Henson conversation?

A. Mr. Mitchell, I can't tell you that, whether Johnson and Henson were in the office first or whether Armour was in there first. I don't remember.

Q. All right. Who was there with Mr. Armour, if you remember?

A. Well, if anybody was with Mr. Armour it would have been Eddie Hopper. But I can't remember whether Eddie Hopper was with him or not. Eddie Hopper is the dealer at Garden Grove, and Mr. Armour is one of his employees.

Q. And was that on this same day?

A. Yes, it was on the same day.

[fol. 983] Q. What was your conversation with Mr. Armour?

A. Well, Mr. Armour had the documents pertaining to a purchase that Eddie Hopper Chevrolet had made through the discount house. Now, this transaction with the discount house was with Bob Wondries Chevrolet in Glendale. Mr. Armour had the documents with him.

[fol. 984] Q. Has that anything, so far as you know, to do any dealer association?

A. I don't believe it had anything to do with it. I think this was something that Eddie Hopper and John Armour did on their own.

Q. How did John Armour happen to come to your office? Was there an appointment, or did he walk in, or otherwise?

A. I can't remember that. He may have called and asked to come in. I don't remember.

Q. Anyway, he was there?

A. Yes, he was there.

Q. All right. Now, what did he say and what did you say?

A. Well, he simply showed me the documents relating to this purchase that they had made from Wondries through the discount house. And he was showing me what had transpired and he had the information with him.

I told him to leave it with me, which he did.

Q. Why did you tell him to leave it with you?

A. Here again, Mr. Mitchell, I wanted to get back to Bob Wondries. Bob Wondries was a brand new dealer. We had just appointed him as a replacement in Glendale for Jackson Howell Chevrolet.

Bob Wondries, I was quite sure, had no idea that such a sale had been made. And I wanted to get back to him [fol. 985] and again cover with him the policy, as announced by General Motors Corporation, and try to persuade him to cease it, if he knew about it.

Q. All right. What did Armour say to you and what did you say to him?

A. Well, I believe you asked me that a minute ago. John Armour I think simply showed me the documents. I don't remember what he said.

And I simply told him to leave them with me.

Q. I see.

A. Other than that, I don't remember what the conversation was.

Q. What did you do then?

A. Well, I took the documents and I gave them to Max Young, who was then the city manager in this particular part of the city. And I asked him to take those documents and go out and see Bob Wondries, sit down with him again and again discuss with him the contents of this letter to find out if Bob Wondries knew that this sale had been made through a discount house. And at the same time tell him that if he wanted to buy the car back he could.

Q. Did Armour bring with him the car, the physical vehicle?

A. No, as I recall he did not. He simply brought the documents.

[fol. 986] Q. Did Mr. Young report back to you what he had done?

A. Yes, he did. He went out to see Bob Wondries that same day.

Q. He told you that?

A. Pardon me?

Q. He told you this?

A. Max told me this.

Q. Yes.

A. He went out to see Bob Wondries that same day.

And showed Bob what had happened. They talked again about the policy that had been announced. Bob Wondries was somewhat upset that this had taken place in his dealership.

He was a brand new dealer. And he stated to Max Young that he certainly was trying to do what he said he was going to do, and that was that he had no intention of getting into the discount house business when he had talked to him prior to this, and that he would certainly see that this did not happen again in his place of business.

Max gave him the information with respect to who had purchased the car. And Max told me that Bob Wondries either personally went down or sent somebody down to Eddie Hopper's and they took a check and paid Eddie Hopper Chevrolet, or John Armour—or whoever's name the car had been purchased—and he brought the car back to [fol. 987] Glendale.

Q. Now, in connection with the Schonlaw transaction, did you report back to the Losor Association how you had disposed of the car, or what you had done?

A. No, I did not, Mr. Mitchell. As I explained a minute ago, I didn't feel that our action in connection with going back to the dealer and again talking to the dealer and giving him a chance to buy the car, if he wanted to do so, was any of their business. This was our business.

Q. Were there any other shopped cars brought to your attention during the months of March and April and even early May of 1961?

A. Yes, sir, I think there were, I believe five or more, five or six.

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[fol. 988] Q. All right. Now, on the occasions of their bringing in information these additional times in March, April and early May, what did you do?

A. We called the dealer into the office and—I believe in all cases—and had a discussion with him relating to our policy.

The Court: You say "we," who do you mean by "we"?

The Witness: Well, this was handled, your Honor, by the city managers. And in some of the conferences that we had with the dealers, I was present, and some of them

I was not present. In most of them I was present part of the time.

By Mr. Mitchell:

Q. Now, when you say the city managers—as long as we are talking about it and we are all not as familiar with them as you are—who are you talking about, just name names.

A. Well, our city managers at that time were Mr. Hawthorne, Mr. Thompson and Mr. Young. The assistant zone manager was Mr. Faust.

[fol. 989] Q. And the way your setup is, will you explain that just once more so we will understand who is involved in these transactions?

A. The three city managers supervise the metropolitan area of Los Angeles. The metropolitan area was divided into three principal areas and each of the city managers was responsible for one of those areas. Each one of those areas was divided into two districts with a district manager working in each district. So that each city manager had two district managers that worked under his direction.

The area outside of the metropolitan area of Los Angeles, which comprised the balance of the zone, going as far north as Bishop and Paso Robles, as far south as Mexico, and Clark County, Las Vegas, and two dealer points in Arizona, was under the jurisdiction of Mr. Faust, the assistant zone manager.

This area, as I recall, was divided into six districts with a district manager assigned to each of those districts, who was responsible to Mr. Faust and whom he supervised.

Q. All right. Now, you tell me that these cars were—or the papers on these cars were brought into the zone office?

A. Yes, sir.

Q. And the city managers, one of the city managers or [fol. 990] the assistant zone manager talked to the dealer who had supplied cars to be sold through the discount houses?

A. Yes, sir.

Q. And that you were present at most of these conferences?

A. Yes, I was. Not for the entire conference but for a good part of it.

Q. All right. The times you were there, what was—was there any difference in the tenor of these, the substance of these conversations?

A. No, there was no difference as far as I could see.

Q. Well, just tell me in substance what was said when you were there.

A. Well, as best I can recall—and I was present when the matter was discussed with Mr. Newman and Mr. Priester and Mr. Cashman—it seems to me there was somebody else, but I can't recall. This was simply a discussion of our policy and in all cases that I sat in on the dealers were unaware that this—this was still going on in their place of business or somebody in their place of business had taken it up.

And we were showing them that this would be a possible violation of their selling agreement, again discussing Mr. Staley's letter with them and at the same time giving them an opportunity to repurchase the car.

[fol. 991] Q. Did any of them refuse to repurchase the car?

A. No, they did not.

Q. What would you have done if they had refused?

A. We would have simply sold the car to another dealer. This is not—this is not unusual, Mr. Mitchell. Frequently when dealers have perhaps too many cars, their inventory is too high, their sales projection may have been perhaps not just exactly in accordance with the sales they got, they might end up with too many cars in inventory or they might be out of balance with respect to certain series and model, or they might have had a situation where they got up to their credit limit with the finance company and couldn't keep the cars they had.

So we would take these cars and sell them to other dealers, because here you have a pretty big area with a large volume and where you have one dealer that has too many cars you may have another dealer that has too few. So we move cars around considerably, and this is not at all an unusual factor in our business.

Q. To whom did you have the checks made that paid for these cars that these supplying dealers repurchased?

A. To Cameron Aikens.

Q. Did you report back to the dealer associations or any of them as to how you had handled these cars?

A. No, I did not. I was certainly under no obligation [fol. 992] to do that. As I mentioned before, this wasn't any of their business.

Q. Do you remember when the last car was offered for repurchase, Mr. O'Connor?

A. Well, I don't remember exactly, Mr. Mitchell. It was early May. That is about as close as I could put it.

Q. This is in 1961?

A. Yes, sir, again 1961.

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Q. Government's Exhibit 201, which I have handed you, [fol. 993] is a memorandum dated January 18, 1961, from Mr. Mays to Mr. Crawford, and on the second page there are two paragraphs that I want to read to you to refresh your recollection.

Mr. Mays says: "Toward the end of our discussion with Mr. Cash it was agreed that after a little time had elapsed it would be well for Mr. Cash to make the necessary arrangements to actually shop as many of these discount houses in order to see if any Chevrolet dealers were still cooperating with them. In fact, Mr. Staley asked Mr. Cash to start shopping some of the discount houses on about January 19th, which happens to be tomorrow.

"It was agreed that if need be the individual who would be actually trying to make a deal through a discount house would be authorized to go through the consummation of a sale and actually buy a new Chevrolet. Any costs involved with regard to this shopping would be charged to central office."

Did you have a conversation with Mr. Cash about this subject?

A. Yes, I did.

Q. When was that conversation?

A. Well, it was right after this time, Mr. Mitchell. Mr. Cash and I were talking on the phone about some other matters, I believe, and Mr. Cash mentioned to me that he [fol. 994] had been asked to do some shopping and he was

stalling a little bit on it, I believe, and I told him that I had been informed by one of the dealers down here that they had intended to do some shopping in connection with this legislative program of theirs, and that if any information was needed certainly he didn't need to shop right at that time, that I could get information from the dealer on this.

That is about the last I heard of that.

Q. Did you actually do any shopping as suggested in this memorandum of Mr. Mays'?

A. No, we did not, Mr. Mitchell.

Q. And this was a conversation that you had prior to the time when the Schonlaw car, which was the first of the association-shopped cars, was dealt with?

A. Yes. This was a conversation where I was told that they had planned to do some shopping in connection with this legislative program.

[fol. 995] Q. Did you, during this time when you were receiving information about shopped cars, and were offering these cars back to the dealers who had sold them, did you have any conversations with Mr. Cash about this matter?

A. Yes, I did.

Q. Do you remember when one or more of those conversations was?

A. Well, one of them was immediately after the Schonlaw and the Hopper transactions, when I told him that Ted Schonlaw had wanted to buy this car back, and I had allowed him to do it. And also the Wondries incident.

And he made some comment about a new dealer—it being a little unusual for a new dealer to get into this type of business right after he had been appointed a Chevrolet dealer.

Q. A small new dealer sign, small letters?

A. Yes.

Q. Did you tell him how you had handled the matter?

A. Yes, I did.

Q. What did you tell him?

A. I told him that we had got back to the dealer and had again covered with them our policy, and again tried to persuade them—if they weren't already so inclined—to stop it.

And that this I felt was something that we should do [fols. 996-997] because every dealer that we had talked to

had told us that they were either going to stop it or they didn't have any intention of getting into it. And here was a way of bringing to their attention that they were not doing what they said they would do, and again an opportunity to discuss with them our policy with respect to this kind of business.

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[fol. 998] Q. All right. Now, between the time that you talked to Mr. Cash about the Schonlaw and Wondries transactions, and when you talked with Mr. Cash about the matter in Government's Exhibit 144, did you talk with Mr. Cash about these five or six other vehicles that had been brought to your attention, and that you had offered back to the dealers for repurchase?

A. Yes, I did.

Q. What other discussion did you have with Mr. Cash?

A. Well, I can't tell you, Mr. Mitchell. I don't remember. But I talked to Mr. Cash frequently, I don't recall what I said to him or what he said to me.

Q. You weren't concealing anything from him?

[fol. 999] A. No, I was not.

Q. Now, if you will look at Government's Exhibit 144, please, at the third paragraph there it says:

"Secondly, the fourth, fifth and sixth paragraphs on page 2 of the Auto Dealer Business Letter dated March 22nd, referring to Chevrolet wholesale personnel in connection with discount house sales of new cars."

What is the Auto Dealer Business Letter?

A. Well, this Auto Dealer Business Letter was a—was called the Green Letter, I believe, which was a kind of a gossip column about the automobile business here in Southern California.

I believe the man who published it was, his name was Green. And I don't know his circulation, but I was apparently on his mailing list because he had sent me copies whenever it was published. And I don't know how often this was, whether it was every month or every week—I think it was every month.

And then I think it was a four-page sheet, as I recall,

and just dealt in gossip about the automobile business around Los Angeles.

Q. All right. Now, did you discuss this March 22nd Auto Letter—Auto Dealer Business Letter with Mr. Cash?

A. Yes, I did.

[fol. 1000] Q. Was this over the phone?

A. Yes, I talked to him over the phone about it. And I sent him a copy of it.

Q. You sent him a copy of the March 22nd Auto Business Dealer Letter?

A. Yes, I did.

Q. All right. Now, what did you say to Mr. Cash and what did Mr. Cash say to you with respect to this matter?

A. Well, I told him that the comments that this man was making in his gossip sheet were completely untrue.

Q. What comments?

A. Well, some comment about the dealers being forced to eat cars.

Q. What do you mean by "eat cars"?

A. Well, I think it probably means that we were forcing a dealer to take back a car. And this was not the case.

Q. Did you tell Mr. Cash this?

A. Yes, I did.

The Court: Is this—what was the name of this sheet?

The Witness: I believe it was called the Green Letter, your Honor.

The Court: Did it carry advertising?

[fol. 1001] The Witness: No, I don't believe he was ever able to get any advertising. I received a note from him a couple of times that he would like to have some advertising. But obviously it wasn't the kind of publication that we would place any advertising in. I never answered him.

[fol. 1002] By Mr. Mitchell:

Q. All right. Now, if you will, turn to page 2 of Government's Exhibit 144, please.

I want to talk to you about whether you discussed these matters with Mr. Cash. In the second full paragraph, the

third line, "These associations for some weeks now have been shopping the various discount houses"——

Let's stop there. Did you discuss that with Mr. Cash in this conversation?

A. Yes, sir.

Q. What did you tell him?

A. You mean in the conversation this is a report of (indicating)?

Q. Yes.

A. No, I don't believe so in this conversation, but previously I had told him that.

Q. Previously you had told him that?

A. Yes.

Q. Had you told him that?

A. Yes.

Q. The next clause of that sentence is, "whenever they are able to buy a new Chevrolet they go through with the deal,"——

Had you talked to Mr. Cash about that previously?

A. Yes, I had.

[fol. 1003] Q. Had you told him that?

A. Yes, sir.

Q. The next clause says, "—with the cars being bought in the name of the attorney who works for the association."

What did you say Mr. Cash, if anything, about that?

A. Well, I had told him that the cars were bought by the association and then when the dealer decided he wanted to repurchase the car he gave the money to the attorney of the association.

Q. The next sentence, the first phrase reads, "The associations themselves contact the selling dealer——"

Did you tell him anything about that?

A. No, I didn't.

Q. Is that correct?

A. Well, it is not what I said. It may be correct in what he told Mr. Mays. I don't know that.

Q. I am not asking you that. I am asking about the fact of whether it is, so far as you know, true that the associations themselves contact the selling dealer.

A. I don't know whether they did not, Mr. Mitchell.

Q. So far as you know, did they?

A. No. I don't know.

Q. The memorandum here states, "The dealer did [fol. 1004] not—" excuse me.

"In practically all cases we find that the dealer did not realize that such sales had been made."

Had you told Mr. Cash anything about that?

A. Yes, I had.

Q. What had you told him?

A. I told him just that, that in these cases where we had discussed the matter with the dealer we went back to him to show him he wasn't doing as he said he would, that this was a complete revelation to them and they didn't know it was going on.

Q. The next phrase, "—as in most cases the dealer, as we understand, has voluntarily bought the car back from the association."

Had you told Mr. Cash anything about that?

A. Yes, sir, I did tell him that.

Q. You told him that?

A. Yes, sir.

Q. The next phrase says, "Chevrolet has nothing to do with these cars being bought back."

The Court: "has had", it says, counsel.

Mr. Mitchell: Yes.

Q. "—has had nothing to do with these cars being bought back."

What did you tell him about that?

[fol. 1005] A. Well, I—this is not what I said to Mr. Cash. However, in a sense I suppose he could say this to Mr. Mays. Really,—

Q. You don't have to speculate on what he could say to Mr. Mays. What did you say to him about this subject?

A. I told him the dealers had a free choice. They could buy the car back or not, if they wished. This is not exactly in accordance with what I told Mr. Cash.

Q. The next phrase says, "—nor have they ever told a dealer that the dealer had to buy back such a car."

What did you say to Mr. Cash about that?

A. I had told him that we never told the dealers they had to buy a car back.

Q. All right. Now, on or about March 27, 1961, which

is the date of this memorandum, did you have a conversation with Mr. Cash about some conversation he had had with Mr. Mays?

A. Yes, sir, I did.

Q. This was over the telephone?

A. Yes. Mr. Cash called me and told me that he had had a conversation with Mr. Mays and that Mr. Mays was concerned whether or not we were doing anything to make the dealer buy a car back, and I told Mr. Cash this was not so, that we were not doing this. This was purely a matter [fol. 1006] of choice by the dealer.

He also asked if I would have any hesitation in demanding a retraction of the statement made in the Green letter, if Mr. Mays proceeded to demand a retraction.

I said I would have absolutely no hesitation whatever, because we were not doing as the Green letter inferred, and that was making the dealers "eat cars," as he put it.

Q. During your entire relationship with this problem of dealers selling through discount houses, Mr. O'connor, were you engaged in a conspiracy, combination or concert of action with any dealer association or with any dealer or group of dealers?

A. No, I was not, Mr. Mitchell.

Q. What were you doing?

A. Well, I think I explained this last Friday, but I will go through it again.

The Court: What were you intending to do? What was your object?

The Witness: My object was to carry out the policy I had been given by the corporation and by Chevrolet, and that was to get to the dealers to show them there was a possible violation of the selling agreement here and try to persuade them to stop it.

I went back to them again in these cases where information had been given to me it was still going on. I was [fol. 1007] interested in completing this job, carrying out the corporation's and Chevrolet's policy.

I was interested in it from my standpoint and from the standpoint of my Los Angeles zone.

By Mr. Mitchell:

Q. Were you trying to help out the dealer associations?

A. No, I was not.

Q. Or any group of dealers?

A. I don't think they need help.

Q. Well, were you trying to help them?

A. No, I was not.

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Cross-examination.

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[fol. 1008] By Mr. Blecher:

Q. Now, at the time you had this meeting, Mr. O'Connor, you were aware of the fact that there were in Los Angeles, in the greater Los Angeles area, three separate and distinct trade associations composed entirely of Chevrolet dealers? You knew that, did you not?

A. Yes.

Q. And you knew their names, did you not, Losor, Foothill and Dealers' Service?

A. Yes.

Q. And you knew, broadly speaking, which dealers composed which of these associations, which dealerships belonged to which of these associations? You could pair them off pretty closely, couldn't you?

A. Fairly closely, yes, sir.

Q. And you were pretty generally familiar with who the officers of these associations were?

A. No, I didn't keep track of the officers. Sometimes I would know, sometimes I wouldn't. They changed officers I think rather frequently.

Q. Well, for example, did you know back in the summer of 1960 that Martin Pollard was the president of Foothill?

A. Yes, I believe I did.

Q. And that he had been president for many years?

[fol. 1009] A. Yes.

Q. Did you have any idea as to who composed the board of directors, for example, of Losor?

A. No, I did not, Mr. Blecher.

Q. Or Dealers' Service?

A. No, I did not know.

Q. Now, when Mr. Steves called you to arrange for this appointment, Mr. O'Connor, I believe your testimony was that he didn't tell you what he wanted to talk to you about, is that right?

A. I don't recall that he told me. He simply asked for an appointment for himself and the dealers who were going to accompany him.

Q. Did he tell you the names of the dealers that were going to accompany him?

A. I don't recall that.

Q. And you didn't question him any further as to what it was they wanted to talk with you about?

A. Not that I remember, Mr. Blecher.

[fols. 1010-1011] Q. Now, this group that came there, you knew when you say them all, did you not, Mr. O'Connor, that each and every one of them was a member of Losor?

A. Well, I presume I did, although I don't recall thinking of it in those terms.

Q. Mr. O'Connor, didn't any of the dealers at this meeting tell you that they, in fact, constituted a committee of Losor that had been designated to call upon you?

A. I don't recall them telling me any such thing.

Q. There was no intimation or conversation at all in connection with what they were doing there as a delegation or group?

A. Yes, they told me what they were doing there.

Q. I mean in terms of there being a committee or a delegation or a group?

A. I don't recall that they told me they were a delegation or a committee at all.

Q. But you won't deny they might have told you?

Mr. Mitchell: I object to that as being argumentative. He says he doesn't remember. It is just argument to do that. Object on that ground.

The Court: Well, I suppose the oldtime cross examination permits. I will allow it. I will allow it.

The Witness: I can't deny because I don't know.

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[fol. 1012] Q. Well, tell me as best you recall what these dealers really complained about in connection with discount houses, Mr. O'Connor?

A. Well, they complained about a group of four or five dealers whom they named that were supplying cars to discount houses in the Orange County area, and they were a little unhappy about some of the complaints that they had had from their own people, from their own sales organization.

I recall that they had stated that some of the salesmen were complaining that they had no chance to get in on a deal, that the customer was sold and gone before the salesman had a chance to get in on the deal.

Q. Didn't some of the dealers in Orange County complain to you about the fact that the dealer up at Eagle Rock was moving these cars down into Orange County at \$75.00 or \$100.00 over cost? Didn't they specifically tell you that?

[fol. 1013] A. They told me Citizens Chevrolet in Eagle Rock was one of the dealers that were supplying the cars.

Q. And didn't—

A. I can't recall they mentioned so much over cost because I doubt if they knew. They didn't seem to have too much information.

Q. Didn't many of the dealers in Orange County tell you that the prices that were being charged through the discount houses were too low and they were forcing them to lose sales or to lower their profits? Didn't they complain about that?

A. I can't recall that. I recall their principal complaint was the fact they were getting a lot of difficulty from their own sales organization, that they were getting in on the deals. They weren't getting the contacts with the customers.

Now, if there was discussion about price, how much they were selling for down there, I don't recall.

Q. Didn't they elaborate on why they weren't getting in on the deals?

A. Well, they were making the point that the customers were going to the discount house and that they weren't getting the exposure that they thought they should have to the customer, and their salesmen were complaining about it. The customer was sold and gone before the salesman in

[fol. 1014] the Chevrolet dealership had a chance to get with them.

Q. You mean they were complaining about the fact the people in Orange County went to the discount house and bought a car and never bothered to go to any dealer?

A. The salesman never got in on the deal.

[fol. 1015] The Court: He never got in on it? You mean he never had a chance to make the sale because the customer didn't show up or couldn't meet the price?

The Witness: The customer didn't show up or they didn't have a chance to contact the customer. The customer didn't come into the dealership or the customer had bought by the time they got to them.

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[fol. 1016] By Mr. Blecher:

Q. What did they say they wanted you to do?

A. Well, they wanted Chevrolet to take some action, and I told them that from the information I had on it, there was very little that we could do about it.

While we don't approve of selling to discount houses, that we certainly don't think it is a good thing for the dealer—we don't think it is a good thing for our product. Nevertheless, we have to recognize the right of a dealer to sell as he wants to, to whomever he wants to; and they knew that.

Q. After this complaint, Mr. O'Connor, did you do anything about advising your superiors in Oakland or in Detroit about this agitation?

A. Yes, I talked to Mr. Cash about it.

Q. What did you tell him?

A. I told him the substance of my meeting with these dealers.

Q. Did you do this in writing or on the telephone?

A. I did not do it in writing. Now, whether I did it on the telephone or in a personal contact, I can't say.

Q. You attended meetings of the zone managers up in Oakland, did you not, from time to time?

A. Yes, I did.

Q. You reported this incident to Mr. Cash at that time?

[fol. 1017] A. After it happened, yes, sir.

Q. Do you know, did Mr. Cash ever tell you whether or not he ever reported it on to Detroit?

A. Not that I recall. Mr. Cash is under no obligation to report back to me on anything.

Q. Now, at the meeting with the dealers in your office, you told them, did you not, you would go out and call upon the dealers that they told you were selling through discount houses, in an effort to persuade those dealers to stop such relationship, did you not?

A. I told them in every case in the zones I had been in, where I was the zone manager, I had always discussed with the dealers when a situation came to my attention that indicated a phase of the business that we did not condone. And that I would talk with these dealers.

Q. And you anticipated talking to these dealers in an attempt to have them or to persuade them to discontinue doing business with discount houses, even though at that time, Mr. O'Connor, you recognized that the dealer had a right to do that?

A. Mr. Blecher, when we come up against a situation like this in Chevrolet, where a dealer is selling to a used car lot or to a discount house, our normal course of action is to talk to that dealer and attempt to persuade him not to do it, not to conduct that type of business, even though at [fols. 1018-1019] the same time we recognize his right to sell to whomever he wants to.

Q. Was that the only meeting you ever held with the dealers on this subject, Mr. O'Connor, prior to January of 1961?

A. Yes, I believe it was.

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Q. Let me direct your attention, if I may, Mr. O'Connor, to the period in December 1960.

Did you have around that time a meeting with Roy Cash, shortly after he returned from the regional managers' meeting in Detroit?

A. Mr. Cash was here in Los Angeles during the last week of December, I believe, and we met at that time, yes.

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[fol. 1020] Q. Well, now, did you discuss with Mr. Cash what your plan of action was going to be in connection with contacting the dealers pursuant to Mr. Averill's instructions?

A. Not that I recall. My instructions were quite clear. I don't believe I needed any explanation from Mr. Cash at that time as to just what course of action I would undertake.

Q. Did Mr. Cash lend any assistance at all, or counsel with you in connection with how all of these dealer conferences were going to be handled?

A. No, I don't believe he did.

Q. Did you ask him for any opinions on that subject, any recommendations?

A. Well, I am sure we had some general conversations about it, Mr. Blecher, but I could not repeat it for you [fol. 1021] today.

Q. Well, did you tell Mr. Cash that Mr. Averill had sent you a memorandum directing that you contact all of the dealers in this zone?

A. I think Mr. Cash already knew this. There would be no point in my telling him about it again.

Q. Did you find out what he was doing there in Los Angeles?

A. Who?

Q. Mr. Cash.

A. Yes. Mr. Cash came down here to talk with some dealers.

Q. Did he tell you that he came down here to talk to some dealers?

A. Mr. Blecher, Mr. Cash had called me prior to his coming down here and asked me to arrange for a conference with several dealers individually, which I did for him.

Q. Where did he call you from, Mr. O'Connor?

A. I believe from Oakland.

Q. And he asked you to arrange for a conference with dealers, did he tell you which dealers he wanted to see?

A. Yes, he told me that he wanted to talk to the dealers who were selling cars through discount houses.

Q. And did he tell you that he had been directed by Mr. Averill in Detroit to meet with those dealers personally? [fol. 1022] A. No, not at that time.

Q. Did he tell you that at any time?

A. Yes, I think he told me later.

Q. When was later?

A. After he came to Los Angeles,

Q. And did he tell you to ascertain, as best you could, the names of each dealer who was doing business with discount houses so that he could meet with those dealers?

A. No, I don't think he told me to ascertain the dealers who were doing this type of business. We already knew that.

Q. You didn't know all of them, did you?

A. I think by that time we knew, if not all of them, most of them.

Q. How many were there?

A. I believe there were not more than possibly seven.

Q. What else did he tell you in this telephone conversation?

A. That is all I can recall.

Q. And he came down here during Christmas and New Year's is that correct?

A. I believe that was the period of time, yes.

Q. And you had Mr. Young arrange appointments for [fol. 1023] the six or seven dealers that were doing business with the discount houses?

A. No, I believe I had had the city manager in each area who had a dealer, or dealers who were doing business with discount houses, to set the conference up.

Q. Did you sit in on any of those conferences?

A. No, I did not.

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[fol. 1024] Q. After he had those meetings with the dealers individually, did he discuss with you what the substance of his conversations with these dealers were?

A. No he did not.

Q. He didn't mention a word?

A. Yes, he mentioned a word.

[fols. 1025-1028] Q. Well, what did he say?

A. He just said that his conferences were well received, and he thought they were very satisfactory.

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[fol. 1029] Q. Now, I noticed in your examination on direct examination both you and Mr. Mitchell talked about this Staley-Roche letter in terms, that it said sales from discount houses could be a violation of the agreement.

Now, will you tell me, Mr. O'Connor, as you read the letter, in what circumstances discount house selling would [fol. 1030] be a violation and in what instances it would not be?

The Court: You mean what he considered?

Mr. Blecher: He said a statement of policy. I want to understand what he understands.

The Court: That is exactly what you are asking for, what he considered.

Mr. Blecher: That is correct, your Honor.

The Court: Yes.

The Witness: Well, I would consider a sale to a discount house, where the title passed from the dealer to the discount house, as not being in violation of the selling agreement. I would consider a sale that a discount house made for the dealer, where title passes directly to the customer, as a possible violation of the selling agreement.

[fol. 1031] Q. Yes. I understand you considered a possible violation. I want to know, when is it a violation, in your judgment, as the highest Chevrolet official in this area, and when wasn't it?

A. It wasn't when the title passed directly to the discount house. When the title passed to the customer and the sale was made by the discount house, it was probably a violation.

Q. Yes, I know it was probably a violation.

Mr. O'Connor, when was it and when wasn't it?

A. Well, I would say it was a violation when the dealer establishes these connections where he has an outlet in another dealer's territory, another dealer's back yard.

Q. You mean it depends on how far the outlet is from the dealer's place of business?

A. No, it does not. The dealer is not entitled to more than the one outlet.

Where the discount house constitutes an established location, which they were, then it is a violation of the selling agreement.

Q. Well, how do you know when it was a location and when it wasn't?

A. Well, I would say that when the discount house handled the transaction, it is a second location.

Q. What if the discount house doesn't do anything [fol. 1032] more, Mr. O'Connor, than give the prospective buyer a card and say, "Get in your car and go see a dealer"? That is a violation?

A. Yes, I would say that is a violation.

Q. What criteria do you use to say when it is and when it isn't?

A. The criteria I would use, Mr. Blecher, would be anything that constitutes a location where there is available information with respect to buying a new Chevrolet from another dealer who may be either widely separated or perhaps not so widely separated.

Q. Well, now, let me ask you this: Mr. Mitchell asked you this question, Mr. O'Connor, on page 723:

"Q. Why didn't you tell each of these dealers that he was violating his contract and he had better stop or his contract would be terminated?"

Do you remember that question?

A. Yes, these—

Q. I want to change it a little bit. In the conversations you had with all the dealers in the Los Angeles zone, Mr. O'Connor, why is it you didn't tell a single one that he was violating his contract?

A. This is not my prerogative as zone manager, Mr. Blecher. I was not authorized to do that.

Q. Were you not authorized to tell the dealer that [fols. 1033-1034] General Motors considered a sale through discount houses to be a violation of the contract, even after you received the Staley-Roche letter?

A. After I received the Staley-Roche letter, we went to the dealers and asked them to review their operations, in the light of whether or not their arrangements with the discount house were valid with respect to the Selling Agreement.

I had no authority to go in to a dealer and say, "This is, period, a violation of your Selling Agreement." Those were not my instructions.

Q. Well, the fact of the matter is, Mr. O'Connor, in every conversation you or your subordinates had with the dealer, not once did you ever say to the dealer flatly and unequivocally that his relationship with the discount house or referral service constituted in Chevrolet's judgment or your judgment or General Motors' judgment a violation of his franchise agreement, is that right?

You didn't say that to one dealer once, did you?

A. The dealer had the letter and he can read just as well as we can.

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[fol. 1035]

June 23, 1964

By Mr. Blecher:

Q. Well, now, can you tell us what you told Mr. Hawthorne to do when the Gus Teacher transaction, which involved Fleet Sales and West Adams Chevrolet, came to your attention?

A. Yes. I talked to Mr. Hawthorne and asked him to recontact Mr. Trider at West Adams Chevrolet, and again discuss with him the policy that we had received on December 29th, or that had been issued on December 29th, and try to persuade him to cease doing this kind of business.

[fol. 1036] Q. Did Mr. Hawthorne ever report back to you on his conversation with Mr. Trider?

A. Yes, I believe he reported back to me concerning this matter, and told me that he had discussed it with Mr. Trider. And Mr. Trider wanted a few days to consider it.

And then later I believe he told me that Mr. Trider had called him again and told him that he was going to get out of this kind of business.

Q. Now, in connection with that one or more reports which Mr. Hawthorne made to you concerning his contact with Mr. Trider, did Mr. Hawthorne tell you that Mr. Trider did not consider Fleet Sales to be a discount house?

A. I can't recall that Mr. Hawthorne told me that, Mr. Blecher.

Q. Do you recall whether or not Mr. Hawthorne told you that Mr. Trider felt that he had complete control over

those transactions, the potential transactions that were referred to him by Fleet Sales? Any conversation along those lines?

A. No, I cannot recall that. As I mentioned, I recall that he told me that Trider wanted a few days to think it over.

Q. In connection with that, Mr. O'Connor, did Mr. Hawthorne tell you that Mr. Trider wanted a few days, not [fols. 1037-1038] only to think it over, but to ascertain whether or not the other dealers had terminated their relationships with discount houses and referral services?

A. Yes, I believe Mr. Hawthorne referred—mentioned that to me.

Q. Did you give any instructions to Mr. Hawthorne as to what he should tell Mr. Trider in that regard, namely, whether or not the other discount houses were—the other dealers were going to give up, or had given up their relationships with discount houses and referral services?

A. No, I don't believe that I did, Mr. Blecher, because this was subsequent to the time that all of the dealers had told us that they were either going to give it up or had no intention of getting into it.

And Mr. Hawthorne, of course, was familiar with that.

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[fol. 1039] Q. Mr. O'Connor, let me invite your attention to page 2 of the Warren Biggs letter, the big paragraph at the beginning, down at the last line of that paragraph on page 2.

A. Yes, sir.

[fol. 1040] Q. "It would also be obvious to you that we would be most reluctant to discard an account as good as this one without rather concrete assurance that it would not be immediately picked up by another Chevrolet dealer."

Do you recall whether or not Warren Biggs made a statement similar, in substance and effect, to that?

A. No, I can't remember he made this statement. Again it is possible he did because this is a long, long time ago, Mr. Blecher, and I remember they were talking about the discount house business, but I can't tell you whether he made these two statements.

Q. Let me invite your attention, Mr. O'Connor, to your memorandum to Mr. Mays, Exhibit 22, the second page, if you will, the second paragraph from the bottom, which reads:

"However, we believe many dealers will cease this type of business if they had any assurance that the account would not be picked up by some other dealer immediately upon relinquishment."

On what basis did you make that representation to Mr. Mays?

A. Well, I made that representation to Mr. Mays based on Mr. Biggs' letter, in which he is making this statement to Mr. Keown.

[fol. 1041] The Court: Let's see if we understand each other. The statement being what?

I am asking you, the statement you are referring to being what?

The Witness: My statement that I made to Mr. Mays in my letter to him of November 22nd, in which I said:

"However, we believe many dealers will cease this type of business if they had any assurance that the account would not be picked up by some other dealer immediately upon relinquishment."

Then I told Mr. Blecher that I made this statement to Mr. Mays because of the statement contained in Mr. Biggs' letter to Mr. Keown, which was an attachment to my letter to Mr. Mays.

The Court: What does it mean there, "picked up"?

The Witness: Well, it means, your Honor, that if Mr. Biggs dropped the Fedco account he would naturally expect some other Chevrolet dealer to move in and pick that account up.

The Court: Was Fedco an account? In what sense—that is what I am getting at.

The Witness: They referred to it as an account at that time.

The Court: I see.

The Witness: This was a discount house——

[fol. 1042] The Court: You were not referring to it as an account, were you, or were you?

The Witness: Well, yes, I referred to it as an account because Mr. Biggs did in his letter.

The Court: All right. Go ahead.

Mr. Blecher: Mr. Figg, may I have Exhibit 201, please?

(Exhibit was handed to counsel.)

The Court: I would like to ask a question.

When was the first day that you can recall that General Motors took a firm stand, made a decision as to what they were going to do? Do you know?

The Witness: Yes, sir, I do know. When I received Mr. Averill's letter dated December 16th, in which I had instructions for myself, the three city managers and the assistant zone manager, to contact all the dealers.

Now, attached to his letter, in which he had an excerpt from Mr. Roche's and Mr. Staley's letters, were also copies of Mr. Staley's and Mr. Roche's letters to the dealers.

The Court: What I am trying to find out is, had you arrived at a point where you were going to say to a dealer, "Well, this is it. Either you do this or else"? Did you ever arrive at that point?

The Witness: No, sir, I never arrived to that point.

[fol. 1043] The Court: Had the company, had General Motors, to your knowledge?

The Witness: Had the company?

The Court: Yes.

The Witness: Not that I know of, your Honor.

The Court: In other words, what I am gathering from your testimony is that this was the art of persuasion you were trying to use, is that right?

The Witness: Yes, that is exactly right, your Honor.

The Court: Without any threat or force of any kind? By "threat" I mean threat to terminate the contract or do anything of that kind.

The Witness: There were no threats to terminate the contract. There was no coercion, no intimidation of any kind at any time.

The Court: Go ahead, counsel.

By Mr. Blecher:

Q. Mr. O'Connor, do you have Plaintiff's Exhibit 201, Mr. Mays' letter to Mr. Crawford?

A. Yes, sir.

Q. I would like to read to you the third paragraph on the first page. It is a little long. You can read along with me.

[fol. 1044] "Mr. Cash promptly arranged for and personally had individual conferences with each of the approximately 15 dealers in the Los Angeles zone who were known to be cooperating in one form or another in the sale of new cars through the various discount houses."

Let's stop there for a moment. Do you know for a fact whether he met with 15 dealers or whether he met with only six or seven?

A. He met with only six or seven, Mr. Blecher.

Q. Do you have any facts at all, Mr. O'Connor, to explain why this memorandum speaks of 15 dealers?

A. No, I do not. I could not tell you.

Q. The second sentence of that paragraph reads:

"In these conferences Mr. Cash reviewed the contents of Mr. Roche's letter and the very logical reasoning behind the position taken by General Motors on this subject, which obviously was just as important to the benefit of the individual Chevrolet dealers as it would be to the benefit of General Motors in protecting the franchise system of operation."

Do you know of any facts, Mr. O'Connor, to indicate Mr. Cash did anything in these conferences with the dealers except to review the position taken by Mr. Roche in the letter?

[fol. 1045] A. Do I know of anything else that he did?

Q. Yes, sir.

A. No, I do not.

Q. The next sentence reads:

"Immediately concluding Mr. Cash's conferences with these particular dealers it was arranged that Mr. O'Connor, the zone manager, together with the city

managers in Los Angeles and the assistant zone manager, to divide up and hold conferences with all the other dealers in the zone, of whom there was no knowledge of their having cooperated in the sale of new cars through discount houses."

Is that accurate?

A. Yes.

Q. Is that, in fact, what happened?

A. Yes, that is accurate.

[fol. 1046] Q. That sentence reads——

The Court: One moment, counsel.

Mr. Blecher: Excuse me, your Honor.

The Court: You say it was arranged that Mr. O'Connor, the zone manager—who arranged it?

The Witness: This was done on instructions that I had received from Mr. L. H. Averill, who at that time was our executive assistant general sales manager, who in this letter of December 16th instructed us to hold these conferences with the dealers.

The Court: Perhaps I interrupted you, go ahead. I had thought I wanted to clear something—I will wait until you finish that page, counsel.

By Mr. Blecher:

Q. The last sentence in that paragraph, Mr. O'Connor, reads:

"This was done in order that every dealer with whom the subject was discussed would know that a similar discussion was being held with all other dealers, so that if certain dealers should elect to discontinue their cooperation with a discount house, we might be able to discourage some other dealer who might be solicited from starting the practice."

Did you understand, Mr. O'Connor, that to be the purpose [fol. 1047] pose for which you and your subordinates in the L. A. Zone were to contact all of the dealers who were not doing business with discount houses?

A. No, I didn't understand that exactly in that way, Mr. Blecher. The letter itself states that it is planned that our

wholesale organization will contact all of the dealers. And that is exactly what we did.

Now, this might be—this might be something that somebody would assume as an afterthought, I presume, that this would have that effect. But this was not in my mind as we made the contacts.

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[fol. 1048] The Court: What was your understanding?

The Witness: My understanding, your Honor, was that we were to contact each of our dealers to review with them the Staley letter in detail.

The Court: That is what we call, I take it, the policy [fol. 1049] letter, is that right?

The Witness: Yes, sir. And we were to find out if there was any question in their minds. And if there was we would try to help them with it. If we couldn't, why, we certainly would have gotten a ruling for them from Detroit, or from some other place.

The Court: A ruling on what?

The Witness: On their question, on whatever their question might be.

The Court: Well, suppose they said to you, well, I am going on with the discount houses. What are you going to do about it? What were you supposed to do if they did that?

The Witness: Well, in that event it would have been my job, your Honor, to call this to the attention of Mr. Cash.

The Court: You would have conveyed that information on up through channels to General Motors, is that right?

The Witness: Yes, yes, your Honor.

The Court: Go ahead, counsel.

You had not been instructed—one other question—you had not received, as I understand your testimony, any instructions that, to take any action of any kind, other than to review?

[fol. 1050] The Witness: Yes, sir, your Honor.

The Court: So if you had gotten an answer of that tenor you would have, instead of doing anything, you would have stopped there, after the persuasion failed, and sent it

through channels to General Motors Corporation, is that right?

The Witness: That would have been my action, yes.

The Court: All right.

By Mr. Blecher:

Q. The fact is, Mr. O'Connor, as you understood it in January of 1961, that the persuasion which Mr. Cash engaged in with the dealers did not fail?

A. Did not—pardon?

Q. Did not fail? You understood that the dealers with whom Mr. Cash talked, each, in fact, discontinued his dealings with discount houses shortly thereafter?

A. Yes, I knew that.

Q. You also knew, did you not, that it would not have accomplished anything substantive for those dealers to have given up the accounts if other dealers were going to come along and pick them up?

A. I am sure it would have been—would have complicated the problem considerably had they done so. However—

[fol. 1051] The Court: I don't get what you mean, counsel. If other dealers had come along and picked what up?

Mr. Blecher: If Warren Biggs gave up the Fedco account, Mr. O'Connor, you would not have understood that to accomplish anything if another Chevrolet dealer then commenced doing business with Fedco?

The Witness: No, it would not have accomplished anything.

The Court: Was that the reason—counsel, am I interrupting, breaking your trend?

Mr. Blecher: No, your Honor.

The Court: If I am, I will restrain myself.

Is that the reason that I read here, this proposition that you are going to talk to all of the dealers apparently, is that right?

The Witness: Yes, sir.

The Court: Was that for the purpose of heading off any person who might decide to do business with a discount house?

The Witness: That was not my understanding at the time, though it would have had this effect.

The Court: What was the purpose of your understanding?

The Witness: I was following the instructions I had in Mr. Averill's letter of December 16th.

[fol. 1052] The Court: That was, though, to make it known to various dealers that General Motors didn't wish this dealing with discount houses, wasn't it?

The Witness: Yes, sir.

The Court: And that was the purpose of calling on the people, the ones that were dealing with the discount houses?

The Witness: Yes, sir.

The Court: To stop it, and to persuade them to stop, and to persuade the others, is that right?

The Witness: We were to talk to them about what their intentions were with regard to this type of business.

The Court: Meaning you were to persuade them not to undertake that type of operation?

The Witness: Yes, your Honor.

The Court: Go ahead, counsel.

By Mr. Blecher:

Q. Now, you recognized at that time, Mr. O'Connor, that in order for that plan which the judge has just interrogated you on, to be effective you would have to find some form of finding out what was going on in connection with dealers doing business with discount houses?

A. No, not at that time I didn't recognize that.

Q. When did—

A. The dealers had said they intended to drop it. And [fol. 1053] those that weren't doing it said they didn't intend to take it up.

Q. At that time you accepted those representations on face value?

A. I felt that those statements were made in sincerity by the dealers.

Q. Then some of the complaining dealers brought to your attention the fact that cars were still being sold through discount houses, did they not?

A. Yes, they did, Mr. Blecher.

[fol. 1054] Q. Now, the fact is, Mr. O'Connor, you

solicited them to advise you about these facts as they became known to the dealers, did you not?

A. I did not at any time.

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[fol. 1055] Q. Let me hand you Plaintiff's Exhibit 134, Mr. Cone—

Mr. Mitchell: Mr. O'Connor is the name.

By Mr. Blecher:

Q. —Mr. O'Connor. It is a letter from Mr. Cone dated January 26, 1961.

Now, Mr. O'Connor, in January, early January of 1961, did you or did you not know that the dealers with whom Mr. Cash had met in these personal private conferences in your office had, in fact, agreed with Mr. O'Connor—with Mr. Cash—excuse me—that they would discontinue their dealings with discount houses?

A. Yes, I am sure I knew this.

Q. And you knew, did you not, from the contacts you and your subordinates in the Los Angeles zone had made at or about that same time that the other dealers with whom you and they spoke gave you the assurance they would not commence selling to discount houses?

A. Yes, that is correct.

Q. In fact, Mr. O'Connor, so far as you knew that understanding was pretty well known throughout all the dealers and by all the dealers in the Los Angeles area, was it not?

A. Mr. Blecher, I couldn't tell you that. I don't know [fols. 1056-1057] whether it was generally known.

We had covered the matter with the dealers individually, but whether this was generally known throughout the Los Angeles area I do not know.

Q. Let me ask you this: In the course of the conversations you had with dealers, did you have any conversations yourself with dealers?

A. Yes.

Q. Didn't any of the dealers inquire as to why you had singled them out for a telephone call?

A. They were notified in the letter from Mr. Staley they

would be contacted by us, Mr. Blecher. They requested the contact be made.

Q. Did any of the dealers ask you whether or not you were calling other dealers?

A. I don't think they had to. I don't recall any dealer asking me that, because the letter said we were going to contact all dealers.

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[fol. 1058] Q. Is it your testimony, Mr. O'Connor, that at no time after early January 1961 did you inform any of these dealers that those dealers who were doing business with discount houses had, in effect, told Mr. Cash they were going to stop? You never made that known to anyone?

[fol. 1059] A. No, I did not. We simply covered the policy with the dealers.

Q. Let me hand you Plaintiff's Exhibit 176, Mr. O'Connor, which is a resolution of the board of directors of the Losor Chevrolet Dealers Association.

At the time you received the thank you letters were you aware of the fact that those letters which were directed to you and others in Chevrolet or General Motors were written pursuant to that resolution?

A. No, I did not, Mr. Blecher.

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Q. But you were aware of the agreement entered into between Mr. Cash and each of the dealers with whom he met, that they would give up selling through discount houses?

A. I don't know of any agreements Mr. Cash entered [fol. 1060] into, Mr. Blecher. I believe I testified that Mr. Cash told me that his conferences with the dealers were well received and he was quite satisfied, and that is the extent of my knowledge of his contacts with the dealers.

Q. I mean that wasn't a day or so after Mr. Cash left but subsequently you learned, did you not, that the dealers with whom he met had told him they were going to give up these discount houses?

A. Yes, I did learn it, Mr. Blecher, and I learned it because, in making our contacts with the dealers, we made

no attempt whatever to eliminate from our contacts the contacts that Mr. Cash had made. So all of the dealers that Mr. Cash talked to were also talked to by my city managers and myself.

Q. You knew at or about the same time Mr. Cash knew that those dealers intended to give up that business, discount house business?

A. I knew after we had made our contacts, yes.

Q. When was the first time, Mr. O'Connor, that you learned, if ever, that the three dealer associations, that are defendants in this litigation, had created a committee to engage in shopping activities?

A. Well, I had a call, Mr. Blecher, in January, around mid-January, I think, where one of the dealers—and I can't tell you for sure who it was—

[fol.1061] The Court: What year, please?

The Witness: 1961, your Honor. It may have been Owen Keown, it may have been Martin Pollard.

At any rate, in this conversation they told me they had intended to do some shopping in connection with a legislative program they were considering.

By Mr. Blecher:

Q. Who told you that, do you remember?

A. No, I can't tell you for sure. It could have been any one of a number of people. One of the dealers, at any rate, Mr. Blecher.

Q. In any event, when they told you they were going to do this for some legislative program, did they tell you specifically who was doing it, Mr. O'Connor?

A. No, they didn't.

Q. Whom did you think it was doing it, these three isolated dealers, or one isolated dealer?

A. No, I assumed the dealers were doing it.

Q. As a body?

A. I don't know whether they were acting as a body.

Q. Mr. Mitchell interrogated you with respect to certain cars that were brought to your attention and subsequently repurchased by dealers who had sold them through discount houses. You recall that?

A. Yes.

[fol. 1062] Q. Now, did you know at the time those cars were purchased and the information concerning them was made available to you, Mr. O'Connor, those cars were purchased by funds supplied by the three defendant dealer associations?

A. Yes, I knew this a little later on, I believe. Originally, when this information was first offered to me and I told them I would accept it, I believe I knew at that time that the Orange County Losor group was doing the shopping.

[fol. 1063] Q. Well, we are talking now about the transactions after the John Armour transaction.

A. Yes.

Q. And after the car they bought from Schonlaw.

A. Yes.

Q. There were a series of cars thereafter, some five or six?

A. Yes.

Q. That were brought to your attention as having been purchased by someone from a discount house, through a discount house?

A. Yes.

Q. Do you recall those?

A. Yes.

Q. Now, it is with reference to those transactions, I am asking you whether or not you were aware of the fact that the funds used to purchase those cars came from a kitty to which each of the three associations contributed?

A. No, I didn't know that it came from a kitty, that each Chevrolet association contributed to.

Q. Well, now—

A. I knew that the association was doing it. The Schonlaw car, for example, I knew had been purchased by the Losor group.

Q. Now, we are past the Schonlaw car.

[fol. 1064] A. Yes.

Q. We are talking about the other five or six cars, Mr. O'Connor. What I am asking you is, without quarreling about words, whether or not you knew that the associations had put up the money to buy these cars?

A. Yes, I knew they had put up the money.

Q. And you also knew, did you not, that they had hired a private investigator for the purpose of going around

from discount house to discount house to see if he could buy a car?

A. No, I did not know that they had a private investigator.

Q. When was the first time you learned about that, Mr. O'Connor?

A. I believe I would have to say that the first I knew about that was during the criminal suit.

Q. You mean during all of the time you received this information, and all of the tape recordings, you didn't know that they had hired a private investigator to do this work for them?

A. No, I don't believe I did. I can't recall that I knew that at all.

Q. Didn't you ever ask any of the dealers who were spending all this time shopping these discount houses?

A. No, I did not.

[fol. 1065] Q. And they never volunteered to you that they had hired somebody to do this for them?

A. I can't recall that they ever told me anything about that. They simply offered the information and I told them I would take it.

Q. Well, now, where did you think the tape recordings had come from?

A. From whoever was doing the shopping.

Q. These tape recordings were each furnished to you, were they not?

A. Mr. Blecher, I can't tell you for sure whether there was a tape recording with each transaction. There were some tape recordings.

Q. Well, what was the purpose for which you received the tape recordings, Mr. O'Connor? What would that help you?

A. The tape recordings came in with the other information relative to the purchase of the car from another dealer through a discount house.

The tape recording was offered to us, along with the other documentary material.

When we got the tape recording, and we had our conference with the dealer, we thought it would be interesting to him—as it was to us—that is, the dealer from whom this car came through a discount house, to hear just how this

[fol. 1066] transaction was handled. And in some cases they were amusing and interesting.

Q. Now, where did you get the tape recorder to play them for each of the dealers?

A. I believe we used our own. Most of the zone offices are equipped with projector equipment and tape recorders, things of that nature.

Q. Now, reflect on that a moment, Mr. O'Connor. In fact, you went out and rented one for each one of these meetings that you had with the dealers, didn't you?

A. Mr. Blecher, I can't answer that. Normally a tape recorder is part of the zone office equipment. If we didn't have one, why, perhaps we did rent one. But I can't tell you for sure whether we did or did not.

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[fol. 1067] Q. Mr. O'Connor, wasn't that really at least a principal reason why you went and got a tape recording and played this—a recorder and played this tape recording to the dealer, namely, to humiliate him?

A. No, it was not. And there was no humiliation whatever.

The Court: Well, was it to confront him? Was that the purpose?

The Witness: No, it was not to confront him, your Honor. In most cases that I had any contact with in this matter these cars had actually gotten away from a dealer. And I think I could say that the dealers were appreciative of the matter being brought to their attention. And they certainly were not embarrassed or humiliated by any tape recording.

In fact, they were amused in some cases, and they were interested to find out who in their organization was still doing this when they had said they wouldn't do it.

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[fol. 1068] By Mr. Blecher:

Q. Mr. O'Connor, I think you testified yesterday that in the early part of 1961, because of your sales quota you figured you had a pretty big job on your hands and were very busy, is that right?

A. Yes, we were very busy, Mr. Blecher.

Q. I take it then your city managers were busy.

A. Yes, we were all busy; we always are.

Q. I suppose that would infiltrate down to the dealer level, since they were selling these cars, that they were pretty busy.

A. I am sure everybody connected with the automobile business, so far as we are concerned, is quite busy, yes, sir.

Q. What I can't understand, in the light of those facts, Mr. O'Connor, is why you were concerned with a stray car getting through a dealership, that you would take the time personally, require your city manager to take his time personally, to require the dealer to take his time personally to come down to the zone office, have a big conference, listen to a tape recording about a car sold through a discount house.

Why didn't you just handle this by a five-minute telephone conversation?

[fol. 1069] A. Because we felt it was quite an important matter. This was a matter that involved a policy that had been announced by General Motors Corporation. We felt that this was something that did require our attention.

Q. You didn't think it could be accomplished by calling up the dealer and telling them about the circumstances without this elaborate conference?

A. No, I did not, Mr. Blecher. I felt that this was a way of bringing to the dealer, bringing to his attention the fact that he was not doing as he said he was, and as he said he would. I thought this was a particularly effective way of showing him that, in spite of the fact that he had told us that he was not going to be in this business or didn't intend to get in this business, that, in fact, he was in this business, even though it may have been done by one of his salesmen or somebody else in the dealership.

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[fol. 1070] Q. At any time during this period, Mr. O'Connor, did it occur to you to tell the associations that if they wanted the cars to be repurchased they ought to go to see the dealers themselves?

A. No, it didn't occur to me to have them do that. This was something I wanted to do.

[fol. 1071] Q. Well, now—

A. This I felt was a very effective means of bringing to the attention of the dealers the fact that here, this is going on in your place of business.

Q. I think you testified yesterday that you did not have any intention of aiding the dealer associations at any time, is that correct?

A. No, I had no interest in aiding the dealer associations. They certainly don't need my aid.

Q. They don't need your aid?

A. Well, no.

Q. Didn't you realize, Mr. O'Connor, that the probability was that a dealer would not repurchase the car if asked to do so by a representative of his dealer association?

A. I don't think that ever occurred to me, Mr. Blecher. I don't believe I even thought about it in that connection.

Q. Well, you certainly didn't really expect any dealer to refuse to repurchase the car after this meeting you had in which you played the tape recording and asked him whether or not he was willing to do so, did you?

A. No, I do not believe that I thought that any dealer would refuse to purchase the car. But, Mr. Blecher, I have been calling on dealers for twenty years. And certainly no [fol. 1072] dealer, in all of the years that I have been calling on them, selling them something, has there ever been any hesitation on the part of the dealer in deciding not to buy, if he so desired.

These men are men of independent thought and action, in my opinion—or they wouldn't even be Chevrolet dealers. And, certainly, they are capable of independent thought. And if they didn't want to buy the cars, they certainly didn't have to. And they would have told me so.

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[fol. 1073] Q. Did you realize that some of the dealers were paying more to repurchase the cars than they had actually sold them for?

A. Yes.

Q. In the face of that you still didn't expect any dealer to refuse to repurchase?

A. If a dealer had refused to repurchase it would have

been perfectly all right with me. I would have sold it to somebody else.

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[fol. 1074] Q. When you asked the dealers to make checks payable to Cameron Aikens, you understood him then to be a representative of the FLD group, which was the advertising fund set up by the three defendant dealer associations?

A. Yes, I knew he acted in that capacity.

Q. It was in that capacity you thought he should be the custodian of the funds?

A. I didn't think he should be the custodian of the funds. I didn't know anything about a custodian or I didn't know anything at that time about any fund.

Q. Who else—

A. I was simply asked if I sold the car that the money go to Cameron Aikens.

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[fol. 1075]

DEFENDANTS REST

Mr. Mitchell: The defendant General Motors rests.

Mr. Blecher: The Government has no rebuttal, your Honor.

[fols. 1076-1077] The Court: And what about the dealers?

Mr. Hansen: The Dealer Associations rest, your Honor.

The Court: Very well. Let's see, we have our date set now for the simultaneous filing of proposed findings and conclusions of law. And that will be most helpful to me, I can assure you.

Now, is there any desire to file any memorandum of any kind, in addition to those prior to argument—what date did we set it on, the 27th of July, was it?

The Clerk: I thought you were going to cover that at the conclusion of the trial, your Honor.

The Court: Would you mind repeating that date?

The Clerk: You said to July 27th in regard to the memorandums.

The Court: Well, I will have to go back, as to the findings they were supposed to be filed when?

Mr. Blecher: July 14th.

The Court: July 14th, not later than that date.

Mr. Mitchell: Well, in response to one of the—I believe one of the memoranda in the early part of the trial—I don't have the transcript here but I am pretty sure my recollection is correct—you requested simultaneous filing at that time, or suggested you were going to request it with references to the transcript and other documents.

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[fol. 1078] The Court: I might ask you this before we leave, counsel, Mr. Blecher, are you familiar with the cases, for example, the tax cases in which the courts have held for many, many years that there cannot be a violation of law, even though a person set out to evade taxes, if there were no taxes due. Are you familiar with that line of cases?

Mr. Blecher: Very generally, your Honor.

The Court: Well, the theory of those cases is if you don't owe a tax, no matter what you set out to do, insofar as tax evasion, you can't violate the law. And I take it if you conspired to defraud the Government in a tax case when there was no tax due, it probably would not be an offense.

I am wondering what the parallel is here. Let us assume, for the purpose of discussion, that General Motors had the legal right to terminate these contracts with their dealers upon the theory that they were violating their contracts, just assume, *arguendo*, then if they had that legal right, is [fol. 1079] there a parallel present similar to the tax case?

Mr. Blecher: Yes, I think, your Honor, if you find that they had the legal right to require the dealers not to do business with discount houses you are going to have to find against us.

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[fol. 1080]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable CHARLES H. CARR, Judge Presiding

No. 62-1208-CC Civil

UNITED STATES OF AMERICA, Plaintiff,

v.

GENERAL MOTORS CORPORATION, et al., Defendants.

[fol. 1081] OPENING ARGUMENT ON BEHALF OF THE
PLAINTIFF

Reporter's Transcript of Proceedings—July 27, 1964

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[fol. 1082] The Court: I suppose with semantics we can do most anything. What you are assuming is that there is a boycott.

In other words, if I have a contract with ten dealers in Southern California, and I find out through some of my customers who come to me and tell me about it, and I go out and say, "You fellows must stop that, you are violating the contract," then I have formed a boycott. That is what you are saying, isn't it?

Mr. Blecher: That is correct, your Honor.

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[fols. 1083-1084] The Court: Well, what right do they have to distribute Chevrolet automobiles? This is the point I am getting at. What is their legal right, or privilege—call it—we can go back to Hoffield, if you want to, and call it a privilege rather than a right—what privilege do they have, legal privilege do they have to distribute Chevrolet automobiles?

Mr. Blecher: They have a right to enter into Chevrolet

dealer agreements with Chevrolet dealers who own these cars to help them, cooperate with them in some form in the sale of those cars, and absent a constitutional right to the contrary—

The Court: So then the Constitution steps in and deprives General Motors of their contractual obligations and rights? That is what you are saying.

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[fol. 1085] ARGUMENT ON BEHALF OF THE DEFENDANT
GENERAL MOTORS

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[fol. 1086] The Court: Well, how do you answer this claim of the Government here that, they say that by going, having these meetings, getting together with these different persons, that what you in effect did was to come to an agreement or understanding to bring about a boycott of the discount houses?

Mr. Mitchell: Well, there is no boycott when we are requiring our dealers to adhere to a lawful provision of an agreement.

And Mr. Blecher seems to concede that when he says, "I think, your Honor, if you find that they had the legal right to require the dealers not to do business with discount houses you are going to have to find against us."

So there is no boycott so long as we are trying to get the dealers to adhere to their agreement they have already made. We don't need any new agreements. We just need them to behave themselves in accordance with the existing agreements.

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[fol. 1087] The Court: Very well.

Now, I take it we are finished filing memoranda.

Mr. Blecher: Yes, your Honor.

The Court: And in the meantime I will have a chance to read the Government's memorandum—I don't know how it got misplaced.

Mr. Hansen: We did not file a memorandum with our findings—

The Court: I know.

Mr. Hansen: The reason we didn't, we felt we had adequately covered it in our pretrial briefs.

The Court: Well, I have read those, counsel. And I am not prepared to say that I know what the law is. But I have at least attempted to make myself acquainted.

But I am still concerned—and I will leave this thought [fols. 1088-1105] with you—I think we start out with major premises here, that if we could reduce to the lowest common denominator the next time—and that is this theory, your boycott theory, I am not too sure that I understand that a person who has no particular reason or right to be in a particular business, if he is excluded that that is a boycott.

Let's say a person, for example, who is a carpenter and he complained that he is excluded from the plumbing business.

Well, I don't see how necessarily that results in a boycott. I don't think it has any effect upon him.

Now, he may want to open some plumbing business, just as a hobby, I don't know. Is that a boycott?

I thought that boycotts generally dealt with excluding competitors from particular fields, making it impossible for them to compete in that field.

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[fol. 1106] IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 1

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil No. 62-1208-CC

UNITED STATES OF AMERICA, Plaintiff

v.

GENERAL MOTORS CORPORATION; LOSOR CHEVROLET DEALERS
ASSOCIATION; DEALERS' SERVICE, INC.; AND FOOTHILL CHEV-
ROLET DEALERS ASSOCIATION, Defendants

STIPULATION OF FACTS NUMBER ONE—January 27, 1964

[fol. 1107] Plaintiff and each of the defendants, through their respective counsel, hereby stipulate that witnesses, if called, would testify to the following facts. It is expressly understood and agreed that:

(a) This stipulation is for the purpose of the above-entitled case only;

(b) Nothing in this stipulation shall be construed to preclude either plaintiff or any of the defendants from offering any evidence relevant to any issue in this case, including evidence which may be related to but does not not contradict the particular facts herein stipulated;

(c) The stipulated facts and the exhibits attached thereto or any of them may be offered in evidence by plaintiff or by any defendant at any time during the trial of this case whether prior or subsequent to the completion of plaintiff's case;

(d) Plaintiff and each defendant reserves the right to object to the receipt into evidence of any fact herein stipulated on any ground or grounds.

I. DEFINITIONS.

1. As used in this stipulation, the following terms have the meanings indicated:

(a) "Chevrolet automobiles" means all of the various series and models of new passenger cars, station wagons, and trucks sold by the Chevrolet Motor Division of General Motors Corporation under trade names including "Chevrolet", "Corvair", and "Corvette", but excluding "Chevy II" and "Chevelle".

(b) "Chevrolet dealer" means any of the persons, firms or corporations who were parties to a Dealer Selling Agreement with the Chevrolet Motor Division of General Motors Corporation as described in Paragraph 17 hereof.

(c) "Southern California area" means the Counties of Los Angeles, Orange, Riverside, San Bernardino, Ventura, San Diego, Imperial, San Luis Obispo, and Santa Barbara, State of California.

II. FACTS.

2. General Motors Corporation (hereinafter General Motors) is a corporation organized and existing under the laws of the State of Delaware with principal offices both in New York, New York, and Detroit, Michigan.

3. The Chevrolet Motor Division of General Motors with its principal offices in Detroit, Michigan, is the sole producer of Chevrolet automobiles.

4. During the period June 1, 1960, through October 12, 1961, John F. Gordon, sometimes referred to as Jack Gordon, was President of defendant General Motors. Mr. Gordon was, during said period, the chief operating officer of General Motors.

5. During the period June 1, 1960, through October 12, 1961, Edward M. Cole was a Vice President of defendant General Motors and was the General Manager of the Chevrolet Motor Division, having general supervision over the operations of said division.

6. During the period June 1, 1960, through October 12, 1961, James M. Roche was a Vice President of defendant General Motors and had general supervision over the Central Office Distribution Staff on General Motors. During that period, such Distribution Staff had as its principal duty the administration of sales, marketing, warranty and service policies adopted by General Motors; the coordination

of policies and practices in these areas of the various General Motors divisions; and the collection and analysis of information and statistical data relating to these areas. During the period, these duties mainly were performed by three departments: The Sales Section, the Service Section and the Advertising and Market Research Section.

7. During the period June 1, 1960, through October 12, 1961, Howard E. Crawford was Manager of the Sales Section of the General Motors Central Office Distribution Staff under the general supervision of James M. Roche, a vice president having jurisdiction over such staff. During that period, Howard E. Crawford had general supervision over [fol. 1110] the personnel and activities of said Sales Section which performed the duties of such Distribution Staff relating principally to the sale and marketing of General Motors products.

8. During the period June 1, 1960, through October 12, 1961, Albert H. Belfie was Merchandising Manager of the Sales Section of the Central Office Distribution Staff of General Motors and, under the general supervision of Howard E. Crawford, Manager of such Sales Section, had as his principal duties the establishment and administration of dealer training programs, collecting information regarding and analyzing programs for the merchandising of General Motors products, and coordinating and assisting Division Sales Promotion Managers in the activities of the various Divisions relating to such merchandising.

9. During the period June 1, 1960, through October 1, 1961, Sidney G. Gilliatt was Manager of Dealer Organization in the Chevrolet Central Office Dealer Organization and Analysis Department under the general supervision of George A. Greig, Manager of such department. During that period, Sidney G. Gilliatt had as his principal duties the accumulation and analysis of data regarding placement and location of Chevrolet dealerships. During the period of October 1, 1961, through October 12, 1961, Sidney G. Gilliatt was Manager of the Chevrolet Central Office Dealer Organization and Analysis Department and had general supervision over the personnel and activities of said department which were principally concerned with collecting and analyzing data regarding the performance of dealers under [fol. 1111] their Dealer Selling Agreements, changes in

Chevrolet dealerships, and the adequacy and location of Chevrolet dealers generally.

10. During the period June 1, 1960 through October 12, 1961, Kenneth E. Staley was General Sales Manager of the Chevrolet Motor Division of General Motors. During said period Mr. Staley maintained his office in Detroit, Michigan, and had general supervision over all sales department functions and activities of the Chevrolet Motor Division under the general supervision of Edward N. Cole, the General Manager of the Chevrolet Motor Division.

11. During the period June 1, 1960 through October 12, 1961, Lawrence W. Averill was the Executive Assistant to the General Sales Manager of the Chevrolet Motor Division of General Motors and had general supervision over the dissemination of sales department policies to the field sales organization under the general supervision of Kenneth E. Staley, the General Sales Manager. During said period, Mr. Averill maintained his offices at Detroit, Michigan.

12. During the period June 1, 1960 through October 12, 1961, Lewell N. Mays was assistant General Sales Manager-West of the Chevrolet Motor Division of General Motors and had general supervision of the field sales organization at the various locations in the geographic territory under his jurisdiction (substantially all the area in the continental United States west of the Mississippi River), under the general supervision of Kenneth E. Staley, the General Sales Manager, and Lawrence W. Averill, the Executive Assistant to the General Sales Manager.

[fol. 1112] 13. During the period June 1, 1960 through October 12, 1961, Roy M. Cash was Regional Manager, Pacific Coast Region of the Chevrolet Motor Division of General Motors and operated under the general supervision of Lee N. Mays, the Assistant General Sales Manager-West. The geographic territory under Cash's jurisdiction included the entire States of California, Oregon, Washington and Alaska, and parts of the States of Nevada, Idaho and Arizona. Cash had general supervision over the sales staff members of the Chevrolet Pacific Coast Region and of the Chevrolet Zones in the geographic territory under his jurisdiction. During said period, Cash maintained his offices at Oakland, California. During said period R. D. Lund was

Assistant Regional Manager assisting Cash in the performance of his duties.

14. During the period June 1, 1960 through October 12, 1961, Robert M. O'Connor was Zone Manager for the Los Angeles Zone of the Chevrolet Motor Division of General Motors Corporation. The approximate geographic territory within the Los Angeles Zone included the area bounded on the north by the northernmost line of Kern County, extended across the width of the State of California; bounded on the south by the Mexican border; bounded on the west by the Pacific Ocean and on the east by a line passing through Las Vegas, Nevada, and Yuma and Parker, Arizona. O'Connor had general supervision over the operation of the Los Angeles Zone, under the general supervision of Roy M. Cash, the Regional Manager for the Chevrolet Pacific Coast Region.

[fol. 1113] 15. During the period May 1, 1960 through October 12, 1961, Fred M. Thompson, Max A. Young and Darrell V. Hawthorne were the three City Managers and Jere Faust was the Assistant Zone Manager of the Chevrolet Los Angeles Zone, except that for the months of May and June, 1960, R. F. Palmer was one of the City Managers in place of Darrell V. Hawthorne. During this period, each of these City Managers and the Assistant Zone Manager had jurisdiction over a particular area within the Chevrolet Los Angeles Zone, under the general supervision of Robert M. O'Connor, the Zone Manager. The duties of each of these City Managers and the Assistant Zone Manager included giving assistance to the Chevrolet dealers under his jurisdiction in the general conduct of their businesses.

16. During the period May 1, 1960 through October 12, 1961, Eugene P. Moran was Los Angeles City Business Manager, whose duties were, under the general supervision of the three Los Angeles City Managers, Max A. Young, Fred M. Thompson and Darrell V. Hawthorne (R. F. Palmer in May and June, 1960), to counsel Chevrolet dealers, in the Los Angeles Metropolitan area, regarding the business management phases of their dealerships.

17. During the period January 1, 1960 through October 12, 1961, the individuals, co-partnerships or corporations named in column 1 of Exhibit 1 attached hereto were all of

the Chevrolet dealers in the Counties of Los Angeles, Orange, Riverside, San Bernardino, Ventura, San Diego, Imperial, San Luis Obispo and Santa Barbara in the State of California. During the said period, each such Chevrolet [fol. 1114] dealer was a party to a "Dealer Selling Agreement" with the Chevrolet Motor Division of General Motors Corporation (hereafter in this paragraph 17 called "Chevrolet").

Each Dealer Selling Agreement was in the form of Exhibit 2.1, Exhibit 2.2 or Exhibit 2.3, attached hereto. Each Dealer Selling Agreement having a beginning effective date prior to November 1, 1960, was in the form of Exhibit 2.1, and each Dealer Selling Agreement having a beginning effective date on or after November 1, 1960, was in the form of Exhibit 2.2; except that Warren Biggs Chevrolet, a corporation, named in Exhibit 1, was a party to a Dealer Selling Agreement in the form of Exhibit 2.3 during the period January 1, 1960, through October 31, 1960.

The "Terms and Conditions" set forth in Exhibit 3.1, attached hereto, were made a part of each Dealer Selling Agreement having a beginning effective date prior to November 1, 1960, by provision Second of each such Agreement. The "Terms and Conditions" set forth in Exhibit 3.2, attached hereto, were made a part of each Dealer Selling Agreement having a beginning effective date on or after November 1, 1960, by provision Second of each such Agreement.

Pursuant to said "Terms and Conditions" each dealer had established a place of business and dealership facilities at a location approved by the Chevrolet Motor Division of General Motors Corporation. With respect to each dealer, said location was as set forth in column 2 of Exhibit 1. [fol. 1115] Paragraph First of each Dealer Selling Agreement referred to an area as follows:

(a) As to each of the said Chevrolet dealers opposite whose name appears "Metropolitan Los Angeles" in column 3 of Exhibit 1 hereto, the area referred to in said paragraph First was defined, from January 1, 1960, through March 31, 1961, in the terms of Exhibit 4.1, attached hereto, and from April 1, 1961, through October 12, 1961, in the terms of Exhibit 4.2, attached hereto.

(b) As to each of the said Chevrolet dealers opposite whose name appears "Metropolitan San Diego" in column 3 of Exhibit 1 hereto, the area referred to in said paragraph First was defined, from January 1, 1960, through October 31, 1960, in the terms of Exhibit 5.1, attached hereto, and from November 1, 1960, through October 12, 1961, in the terms of Exhibit 5.2, attached hereto.

(c) As to each of the said Chevrolet dealers opposite whose name appears "San Bernardino County" in column 3 of Exhibit 1 hereto, the area referred to in said paragraph First was defined, from January 1, 1960, through October 12, 1961, in the terms of Exhibit 6, attached hereto.

(d) As to each of the said Chevrolet dealers not included in paragraphs (a), (b) and (c) above, the area [fol. 1116] referred to in said paragraph First was defined, from January 1, 1960, through October 12, 1961, in the terms appearing opposite the name of such dealer in column 3 of Exhibit 1 hereto.

Each Dealer Selling Agreement was effective during the period appearing opposite the name of each dealer in column 4 of Exhibit 1 hereto, except that where Exhibit 1 shows that a Dealer Selling Agreement regarding a particular location was executed before the expiration date of a previous Dealer Selling Agreement regarding the same location, the previous Dealer Selling Agreement was superseded by the subsequent Dealer Selling Agreement.

Each dealer opposite whose name appears a date or dates in column 5 of Exhibit 1 entered into a "Metropolitan Area Addendum" with Chevrolet in the form of either Exhibit 7.1 or Exhibit 7.2, attached hereto, on such date or dates.

[fol. 1117] 18. Defendant Losor Chevrolet Dealers Association (hereinafter "Losor") is a non-profit corporation, organized and existing under and by virtue of the laws of the State of California.

19. Membership in Losor from June 1, 1960, to October 12, 1961, consisted of Chevrolet dealers, as defined in paragraph 1(b) above, located in Orange County or Los Angeles County, State of California, as set forth in Exhibit 8, attached hereto.

20. The corporate officers and the corporate directors of Losor from June 1, 1960, to October 12, 1961, were as set forth in Exhibits 9 and 10, respectively, attached hereto.

21. Defendant Dealers' Service, Inc. (hereinafter "DSI") is a non-profit corporation, organized and existing under and by virtue of the laws of the State of California.

22. Membership in DSI from June 1, 1960, to October 12, 1961, consisted of Chevrolet dealers, as defined in paragraph 1(b) above, located in the County of Los Angeles, State of California, as set forth in Exhibit 11, attached hereto.

[fol. 1118] 23. The corporate officers and the corporate directors of DSI from June 1, 1960, to October 12, 1961, were as set forth in Exhibits 12 and 13, respectively, attached hereto.

24. Defendant Foothill Chevrolet Dealers Association (hereinafter "Foothill") is a non-profit corporation, organized and existing under and by virtue of the laws of the state of California.

25. Membership in Foothill from June 1, 1960, to October 12, 1961, consisted of Chevrolet dealers, as defined in paragraph 1(b) above, located in the Counties of Los Angeles, Riverside or San Bernardino, State of California, as set forth in Exhibit 14, attached hereto.

[fol. 1119] 26. The corporate officers and the corporate directors of Foothill from June 1, 1960, to October 12, 1961, were as set forth in Exhibits 15 and 16, respectively, attached hereto.

27. LFD Chevrolet Associates, Inc. (commonly known as "LFD") is a non-profit corporation, organized and existing under and by virtue of the laws of the State of California. Membership in LFD consists of defendants Losor, DSI and Foothill. LFD engages in the advertising of Chevrolet motor vehicles.

28. The following persons, firms and corporations are the discount houses or referral services referred to in plaintiff's complaint and maintained a place of business at the stores and addresses listed adjacent to their respective names during all or part of the period from January 1, 1960, through October 12, 1961:

Name of Person, Firm or Corporation	Names of Stores and Addresses
AAAA Auto Lease & Sales, Inc.	2514 W. Olympic Blvd., Los Angeles, Cal.
"	5200 Laurel Canyon Boulevard North Hollywood, Cal.
"	Leonard's Discount Store 600 N. Sepulveda, El Segundo, Cal.
[fol. 1120]	
AAAA Auto Lease & Sales, Inc.	Leonard's Discount Store 12891 Harbor Blvd., Garden Grove, Cal.
Autorama	9650 Lincoln Ave. (now 2322 Lincoln Ave. due to renumbering) Anaheim, Cal.
The Brockway Plan Cal Fleet Auto Sales	1809 S. Brand, Glendale, Cal. Cal Stores 2500 Carson, Lakewood, Cal.
Car Wholesalers	13306 Ventura Blvd. Sherman Oaks, Cal.
Castle Sales, Inc.	More Department Store 3443 S. Sepulveda, Los Angeles, Cal.
"	More Department Store 18300 Vanowen, Reseda, Cal.
"	More Department Store 8682 Garvey Blvd. South San Gabriel, Cal.
Robert Chico	ABC Store 3328 W. Bolsa, Santa Ana, Cal.
[fol. 1121]	
Robert Chico	Gemco Store 9700 Lincoln Ave. (now 2300 Lincoln Ave. due to renumbering) Anaheim, Cal.
"	Udisco Store 12500 Bellflower, Downey, Cal.

Name of Person, Firm or Corporation	Names of Stores and Addresses
"	F.O.R.E. Store, Inc. 1201 E. Highland Ave. San Bernardino, Cal.
"	Union Store 9135 Central Ave., Montclair, Cal.
"	J. M. Arnoff Co. (Big "A" Store) 8341 Canoga Ave., Canoga Park, Cal.
Dealers Diversified Services, Inc.	Fedco Store 3912 Slauson Ave., Los Angeles, Cal.
"	Fedco Store 14920 Raymer, Van Nuys, Cal.
"	Fedco Store 5436 N. Woodruff, Lakewood, Cal.
[fol. 1122]	
Dealers Diversified Services, Inc.	Fedco Store 1140 W. 2nd St. San Bernardino, Cal.
Arthur Diamond	12135 Victory Blvd. North Hollywood, Cal.
Fleet Sales Co.	3870 Crenshaw Blvd. Los Angeles, Cal.
Union Car Sales	Certi-Bond Store 501 S. Arlington, Torrance, Cal.
"	Consumers Mart of America 1440 S. Los Angeles, Anaheim, Cal.
Union Fleet, Inc.	Cal Stores 2500 Carson, Lakewood, Cal.

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[fol. 1123] 36. (a) As used in this paragraph the words "said discount houses or referral services" mean the persons, firms and corporations listed in paragraph 28 of this stipulation.

(b) As used in this paragraph, the words "said

documents" mean all of the following documents of said discount houses and referral services prepared in connection with the sale of Chevrolets, pursuant to [fol. 1124] agreements or understandings between Chevrolet dealers and said discount houses or referral services by which said discount houses or referral services performed one or more of the merchandising functions described in paragraph 14 of plaintiff's complaint which were theretofore performed by such Chevrolet dealers:

- (i) Sales journals or ledgers;
- (ii) Purchase orders;
- (iii) Sales invoices;
- (iv) Sales contracts;
- (v) Conditional sales contracts and any other lien-retaining documents;
- (vi) Books, papers and documents showing the appraisal of trade-in cars;
- (vii) Books, papers and documents showing the names of the appraisers of trade-in cars;
- (viii) If any of the books, papers or documents described in Items (i) to (vii), inclusive, is not available or was not used, then any other book, paper or document, however labeled or designated, which served the same purpose.

(c) All of said documents were made as memoranda or records of the sale of Chevrolets in the regular course of business of persons, firms or corporations whose regular course of business included the making [fol. 1125] of such memoranda or records at the time of such sale or within a reasonable time thereafter.

(d) All of said documents are genuine and authentic.

(e) Witnesses, if called, would testify that true and correct copies of all of said documents for the period January 1, 1960, through October 12, 1961, in the possession, custody or control of said discount houses or referral services on or about July 1, 1962, or which had been delivered to plaintiff prior thereto by said discount houses or referral services were delivered to counsel for defendant General Motors Corporation and by said counsel to Price Waterhouse & Co. prior to

January 1, 1963. Said copies may be used with the same force and effect as the originals.

(f) All of said documents shall be available to plaintiff for inspection and copying at Price Waterhouse & Co. during ordinary business hours on dates to be agreed upon by counsel or fixed by the Court and shall be available for use by plaintiff at the time of its cross-examination of any Price Waterhouse witness.

* * * * * * *

[fol. 1126] Dated: January 27, 1964.

Maxwell M. Blecher, Robert C. Weinbaum. By Maxwell M. Blecher, Attorney, Department of Justice. O'Melveny & Myers, Lawler, Felix & Hall, Aloysius F. Power, Robert A. Nitschke, Nicholas J. Rosiello. By Homer I. Mitchell, Hansen & Dolle, Glenn S. Roberts, By Victor R. Hansen, Attorneys for Defendants.

It is so Ordered this 27 day of January, 1964.

Charles H. Carr, United States District Judge.

[fol. 1127] EXHIBIT 2.1 TO STIPULATION OF FACTS
NUMBER ONE

Form No. GSD-T201-A-Chevrolet-56

U.S.A. Rev. 7-59

CHEVROLET MOTOR DIVISION
General Motors Corporation

Dealer

Selling Agreement

This Agreement, effective this day of
....., A.D. 19....., by and between Chevrolet Motor Division—General Motors Corporation, hereinafter called Chevrolet, and

.....
an { individual
or { co-partnership of
a { corporation
City County State

hereinafter called Dealer,

General Purpose of This Agreement

The purpose of this Selling Agreement is to set forth the functions and responsibilities of the parties in the sale by Chevrolet to Dealer of the motor vehicles, chassis, parts and accessories covered by this Agreement and the resale of those products by Dealer to its customers.

Both Chevrolet and Dealer recognize that in the manufacture, sale and service of motor vehicles the public is provided with a highly mechanized product of substantial value, the purchase of which is of major economic significance, and the usage of which has become to many a virtual necessity; and that the efficient and safe operation of motor vehicles is dependent upon the maintenance of the highest standards of production by the manufacturer and the highest standards of sales and service performance by the Dealer.

Chevrolet recognizes, therefore, that a sound dealer organization is essential to the public interest as well as to

its own success, and desires a stable and prosperous dealer organization.

Chevrolet has elected to enter into this Selling Agreement with Dealer because of its confidence in Dealer's integrity and business ability. It expects of Dealer, and Dealer acknowledges, that Dealer will actively, aggressively and honestly promote the sale of the motor vehicles, chassis, parts and accessories covered by this Agreement to customers in its trade territory and give to the public prompt, efficient and courteous service; and that Dealer will conduct its business in a manner that will reflect favorably upon the Dealer and its operations, Chevrolet and Chevrolet products and will preserve the good will of the Dealer and its operations and the manufacturer, as well as the product good will that has been created by the production of motor vehicles, parts and accessories of the highest quality and design.

[fol. 1128] Dealer has elected to enter into this Selling Agreement with Chevrolet because of its knowledge of the Chevrolet reputation for integrity and fair business practices and of the customer acceptance for Chevrolet products. Dealer expects of Chevrolet and Chevrolet acknowledges, that Chevrolet will produce and provide, at fair and competitive prices, motor vehicles, parts and accessories that are saleable in Dealer's territory and of a quality and design that under normal conditions and when properly adjusted and maintained, will give good performance for their owners; that, insofar as possible, Chevrolet will make such products available in quantities to meet Dealer's reasonable requirements in Dealer's trade area; that Chevrolet will assist in creating a demand for such products by advertising in various advertising media; and that Chevrolet will assist Dealer in the sale of such products by making available to Dealer, sales assistance and advice, advertising materials and campaigns, and instructions in sales and business methods.

In Consideration of the foregoing and of the promises hereinafter made by the parties to each other, it is agreed as follows:

First: Subject to the terms and conditions hereof, Chevrolet will sell and Dealer will buy Chevrolet motor vehicles and chassis with Dealer having the obligation to develop

properly the sale thereof at retail particularly in the following area:

Second: The terms and conditions set forth in the attached "Terms and Conditions—Dealer", bearing Form No. GSD-T202-Chevrolet-56 are hereby made a part of this Agreement with the same force and effect as if set forth at length herein.

Third: This is a personal contract, being entered into in reliance upon and in consideration of the personal qualifications of and representations with respect thereto of the following named persons, who actively and substantially participate in the ownership or in the operations, or both in the ownership and in the operations of the Dealer:

[fol. 1129]

Participation in Dealership

Name	Ownership	Operation
.....	<input type="checkbox"/>	<input type="checkbox"/>
.....	<input type="checkbox"/>	<input type="checkbox"/>
.....	<input type="checkbox"/>	<input type="checkbox"/>

The individual or individuals designated shall be responsible for any act or omission of any of Dealer's agents or employees which may be contrary to the purposes and objectives of this Agreement or the obligations of Dealer hereunder. Dealer shall not transfer or assign nor attempt to transfer this Agreement or any right or obligation hereunder. Dealer shall not make nor suffer to be made any change in the ownership, financial interests or active management of Dealer without the prior written approval of Chevrolet.

Fourth: This Agreement shall continue in force and govern all relations and transactions between the parties for a term commencing on the stated date of execution hereof and expiring At the end of the stipulated term, this Agreement shall automatically terminate without notice or action on the part of either party unless sooner terminated as hereinafter provided in Section 23.

Fifth: This Agreement is not valid until and unless it bears the facsimile signature of the General Sales Manager and is countersigned by an Assistant General Sales Manager, a Regional Manager, an Assistant Regional Manager or Zone Manager of the Chevrolet Motor Division—General Motors Corporation.

In Witness Whereof, the parties hereto have executed this Agreement in duplicate as of the day and year first above written. .

Chevrolet Motor Division, General Motors Corporation,
K. E. Staley, General Sales Manager. By
—, —, Zone Manager.

Dealer

Firm Name

By

Officer of Firm and Title

By

Officer of Firm and Title

Town and State

Witness:

(If executed by a representative of Dealer, title such as President, Partner, etc., must be indicated.) If Dealer is a corporation, show State in which incorporated:

[fol. 1130] EXHIBIT 2.2 TO STIPULATION OF FACTS
NUMBER ONE

Form No. GSD-T-201

U.S.A. 8-60

CHEVROLET MOTOR DIVISION
General Motors Corporation

Dealer

Selling Agreement

Agreement, effective the day of,
19...., by and between Chevrolet Motor Division—General
Motors Corporation, hereinafter called Chevrolet, and

.....,
an individual
a co-partnership } of
a corporation } City County State
hereinafter called Dealer.

General Purpose of This Agreement

The purpose of this Selling Agreement it to set forth the functions and responsibilities of the parties in the sale by Chevrolet to Dealer of the motor vehicles, chassis, parts and accessories covered by this Agreement and the resale of those products by Dealer to its customers.

Both Chevrolet and Dealer recognize that the mutually beneficial sale of Chevrolet products and the efficient and safe operation of Chevrolet motor vehicles are dependent upon the maintenance of the highest standards of manufacture by Chevrolet and the highest standards of sales and service performance by Dealer.

Chevrolet has elected to enter into this Selling Agreement with Dealer in reliance upon the ability of Dealer to meet and perform the operating requirements hereof and in reliance upon the personal qualifications and business ability of the person or persons who are named in Paragraph Third hereof. Chevrolet expects of Dealer, and Dealer in executing this Agreement acknowledges, that Dealer will actively, aggressively and honestly promote the sale of the

motor vehicles, chassis, parts and accessories covered by this Agreement to customers in the area of sales responsibility described in Paragraph First hereof and will give to the public prompt, efficient and courteous service; and that Dealer will conduct its business in a manner which will reflect favorably upon Dealer and its operations, Chevrolet and Chevrolet products and which will preserve the good will of Dealer and its operations and Chevrolet, as well as the product good will which has been created by the manufacture of Chevrolet motor vehicles, chassis, parts and accessories of the highest quality and design.

[fol. 1131] Dealer has elected to enter into this Selling Agreement with Chevrolet because of its knowledge of the Chevrolet reputation for integrity and fair business practices and of the customer acceptance of Chevrolet products. Dealer expects of Chevrolet, and Chevrolet acknowledges, that Chevrolet will product and provide, at fair and competitive prices, motor vehicles and chassis, parts and accessories, which are saleable in Dealer's area of sales responsibility and which are of a quality and design that under normal conditions and when properly adjusted and maintained will give good performance for their owners; that, insofar as possible, Chevrolet will make such products available in quantities to meet Dealer's reasonable requirements in Dealer's area of sales responsibility; that Chevrolet will assist in creating a demand for such products by advertising in various advertising media; and that Chevrolet will assist Dealer in the sale of such products by making available to Dealer sales assistance and advice, advertising materials and campaigns, and instructions in sales and business methods.

In Consideration of the foregoing and of the promises hereinafter made by the parties to each other, it is agreed as follows:

First: Subject to the terms and conditions hereof, Chevrolet will sell and Dealer will buy Chevrolet motor vehicles with Dealer having the obligation to develop properly the sale thereof at retail particularly in the following area:

Second: The terms and conditions set forth in the attached "Terms and Conditions—Dealer", bearing Form No. GSD-T-202-60 are hereby made a part of this Agreement with the same force and effect as if set forth at length herein.

Third: This Agreement is a personal service contract, and is entered into by Chevrolet with Dealer in reliance upon and in consideration of the personal qualifications of and representations with respect thereto of the following named person or persons who, it is agreed, will substantially participate in the ownership of Dealer and/or will actively participate in the operation of Dealer's Chevrolet dealership:

[fol. 1132]

Name	Participating in Ownership	Participating in Operation
.....	<input type="checkbox"/>	<input type="checkbox"/>
.....	<input type="checkbox"/>	<input type="checkbox"/>
.....	<input type="checkbox"/>	<input type="checkbox"/>

For the purposes of this Agreement the person or persons designated above shall be responsible for any act or omission of any of Dealer's agents or employees which may be contrary to the purposes and objectives of this Agreement or to any provision of this Agreement.

Concurrently with the execution of this Agreement, Chevrolet has endorsed its approval of the ownership, financial interests and active management of Dealer as represented by Dealer on a "Dealer Statement of Ownership, Financial Interests and Active Management" form supplied by Chevrolet. No change in such ownership, financial interests or active management of Dealer shall be made without the prior written approval of Chevrolet. Any such approved change shall be evidenced by the execution of a revised "Dealer Statement of Ownership, Financial Interests and Active Management".

Fourth: This Agreement shall continue in force and govern all relations and transactions between the parties for a term commencing on the stated date of execution hereof and expiring At the end of the

stipulated term, this Agreement shall automatically terminate without notice or action on the part of either party unless sooner terminated as hereinafter provided in Section 18.

In the event a new and superseding form of Chevrolet Dealer Selling Agreement is offered to Chevrolet dealers generally effective November 1, 1965, Chevrolet may terminate this Agreement by prior written notice to Dealer, provided that, at the same time, Chevrolet offers Dealer such new and superseding form of Selling Agreement for a period of not less than the then unexpired term of this Agreement.

Fifth: This Agreement is not valid until and unless it bears the signature or facsimile signature of the General Sales Manager and is countersigned by an Assistant General Sales Manager, a Regional Manager, an Assistant Regional Manager or a Zone Manager of the Chevrolet Motor Division—General Motors Corporation.

In Witness Whereof, the parties hereto have executed this Agreement in duplicate as of the day and year first above written.

Chevrolet Motor Division, General Motors Corporation,
By K. E. Staley, General Sales Manager. By
—, —, Manager.

Dealer

Firm Name

By

Officer of Firm and Title

By

Officer of Firm and Title

Town and State

Witness:

(If executed by a representative of Dealer, title such as President, Partner, etc., must be indicated.) If Dealer is a corporation, show State in which incorporated:

[fol. 1133] EXHIBIT 2.3 TO STIPULATION OF FACTS
NUMBER ONE

Form No. GSD-C201-A-Chevrolet-56

U.S.A. Rev. 7-59

CHEVROLET MOTOR DIVISION
General Motors Corporation

Dealer

Selling Agreement

This Agreement, effective this day of
....., A.D. 19....., by and between Chevrolet Motor Division—General Motors Corporation, hereinafter called Chevrolet, and

.....
an { individual
or { co-partnership of
a { corporation City County State

hereinafter called Dealer,

General Purpose of This Agreement

The purpose of this Selling Agreement is to set forth the functions and responsibilities of the parties in the sale by Chevrolet to Dealer of the motor vehicles, chassis, parts and accessories covered by this Agreement and the resale of those products by Dealer to its customers.

Both Chevrolet and Dealer recognize that in the manufacture, sale and service of motor vehicles the public is provided with a highly mechanized product of substantial value, the purchase of which is of major economic significance, and the usage of which has become to many a virtual necessity; and that the efficient and safe operation of motor vehicles is dependent upon the maintenance of the highest standards of production by the manufacturer and the highest standards of sales and service performance by the Dealer.

Chevrolet recognizes, therefore, that a sound dealer organization is essential to the public interest as well as to

its own success, and desires a stable and prosperous dealer organization.

Chevrolet has elected to enter into this Selling Agreement with Dealer because of its confidence in Dealer's integrity and business ability. It expects of Dealer, and Dealer acknowledges, that Dealer will actively, aggressively and honestly promote the sale of the motor vehicles, chassis, parts and accessories covered by this Agreement to customers in its trade territory and give to the public prompt, efficient and courteous service; and that Dealer will conduct its business in a manner that will reflect favorably upon the Dealer and its operations, Chevrolet and Chevrolet products and will preserve the good will of the Dealer and its operations and the manufacturer, as well as the product good will that has been created by the production of motor vehicles, parts and accessories of the highest quality and design.

[fol. 1134] Dealer has elected to enter into this Selling Agreement with Chevrolet because of its knowledge of the Chevrolet reputation for integrity and fair business practices and of the customer acceptance for Chevrolet products. Dealer expects of Chevrolet, and Chevrolet acknowledges that Chevrolet will produce and provide, at fair and competitive prices, motor vehicles, parts and accessories that are saleable in Dealer's territory and of a quality and design that under normal conditions and when properly adjusted and maintained, will give good performance for their owners; that, insofar as possible, Chevrolet will make such products available in quantities to meet Dealer's reasonable requirements in Dealer's trade area; that Chevrolet will assist in creating a demand for such products by advertising in various advertising media; and that Chevrolet will assist Dealer in the sale of such products by making available to Dealer, sales assistance and advice, advertising materials and campaigns, and instructions in sales and business methods.

In Consideration of the foregoing and of the promises hereinafter made by the parties to each other, it is agreed as follows:

First: Subject to the terms and conditions hereof, Chevrolet will sell and Dealer will buy Chevrolet motor vehicles

and chassis with Dealer having the obligation to develop properly the sale thereof at retail particularly in the following area:

Second: The terms and conditions set forth in the attached "Terms and Conditions—Dealer", bearing Form No. GSD-C202-Chevrolet-56 are hereby made a part of this Agreement with the same force and effect as if set forth at length herein.

Third: This is a personal contract, being entered into in reliance upon and in consideration of the personal qualifications of and representations with respect thereto of the following named persons, who actively and substantially participate in the ownership or in the operations, or both in the ownership and in the operations of the Dealer:

[fol. 1135] Participation in Dealership

Name	Ownership	Operation
.....	<input type="checkbox"/>	<input type="checkbox"/>
.....	<input type="checkbox"/>	<input type="checkbox"/>
.....	<input type="checkbox"/>	<input type="checkbox"/>

The individual or individuals designated shall be responsible for any act or omission of any of Dealer's agents or employees which may be contrary to the purposes and objectives of this Agreement or the obligations of Dealer hereunder. Dealer shall not transfer or assign nor attempt to transfer this Agreement or any right or obligation hereunder. Dealer shall not make nor suffer to be made any change in the ownership, financial interests or active management of Dealer without the prior written approval of Chevrolet.

Fourth: This Agreement shall continue in force and govern all relations and transactions between the parties hereto until terminated pursuant to the terms and provisions hereinafter provided in Section 23.

Fifth: This Agreement is not valid until and unless it bears the facsimile signature of the General Sales Manager and is countersigned by an Assistant General Sales Manager, a Regional Manager, an Assistant Regional Manager or Zone Manager of the Chevrolet Motor Division—General Motors Corporation.

In Witness Whereof, the parties hereto have executed this Agreement in duplicate as of the day and year first above written.

Chevrolet Motor Division, General Motors Corporation,
K. E. Staley, General Sales Manager, By
—, —, Zone Manager.

Dealer

Firm Name

By

Officer of Firm and Title

By

Officer of Firm and Title

Town and State

Witness:

(If executed by a representative of Dealer, title such as President, Partner, etc., must be indicated.) If Dealer is a corporation, show State in which incorporated:

[fol. 1136] **EXHIBIT 3.1 TO STIPULATION OF FACTS
NUMBER ONE**

**GENERAL MOTORS CORPORATION
Chevrolet Motor Division**

Dealer Selling Agreement

[fol. 1137]

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[fol. 1138] Attach Signatural Attachment to This Page

[fol. 1139] Form No. GSD-T202-Chevrolet-56
U.S.A.—3-56

CHEVROLET MOTOR DIVISION
General Motors Corporation

Terms and Conditions

Dealer

The following Terms and Conditions have by reference been incorporated in and made a part of the Selling Agreement which shall apply to and govern all transactions, dealings and relations between the parties:

SELLING RIGHTS, TERMS AND CONDITIONS OF SALE

1. Dealer's Selling Privilege

Dealer is granted the non-exclusive privilege of selling new Chevrolet motor vehicles and chassis and the non-exclusive privilege of using the word "Chevrolet" and the Chevrolet trade-mark or trade-marks, including the distinctive outline or form thereof, as applied to Chevrolet motor vehicles and chassis, parts and accessories.

2. Handling of Dealer's Orders

A. Three Months' Estimate of Requirements

To enable Chevrolet to establish production schedules, and to place orders with its suppliers on the basis of the lead time normally required in the automobile mass production industry, and to have such schedules reflect the best combined estimate of Chevrolet and its dealers of Chevrolet motor vehicle and chassis requirements for future retail deliveries, Dealer will, unless otherwise advised by Chevrolet, furnish Chevrolet every month, on forms provided by Chevrolet, an estimate of Dealer's requirements of new Chevrolet motor vehicles and chassis for the next three (3) calendar months, each month's estimate to be shown separately.

B. Ten-Day Report

To assist Chevrolet in the evaluation of current market trends and in the adjustment of established future production schedules, as well as current production schedules to

the extent possible, Dealer will furnish Chevrolet, every ten (10) days, with a report known as the "Ten-Day Report" on forms supplied by Chevrolet. Such report shall show retail sales of both new and used cars made during said period, new and used car stocks, and unfilled orders on hand at the end of said period.

[fol. 1140] *C. Orders*

Dealer shall submit orders for Chevrolet motor vehicles and chassis to Chevrolet for acceptance at mutually satisfactory periods. Such orders shall be submitted upon order forms supplied by Chevrolet. Accepted orders for any standard products not shipped during the month for which delivery was scheduled will remain in effect unless cancelled in whole or in part by either party upon written notice to the other. However, orders for "special" motor vehicles and chassis, accepted by Chevrolet for the convenience of Dealer, may be cancelled only by Chevrolet.

Any motor vehicle or chassis which differs from Chevrolet's standard specifications and/or incorporates special equipment, and which because of such difference in specifications or increase in price has only a limited use or marketability, shall be considered "special".

D. Failure to Fill Orders

Chevrolet shall not be liable for failure or delay in filling orders of Dealer, which have been accepted by Chevrolet, where such failure or delay is due, in whole or in part, to any labor, material, transportation, or utility shortage or curtailment, or to any labor trouble in the plants of Chevrolet or its suppliers, or to any cause beyond the control or without the fault or negligence of Chevrolet. Dealer shall not be liable for any failure to accept shipments of products ordered from Chevrolet, where such failure is due to any labor trouble in Dealer's establishment or any cause beyond the control or without the fault or negligence of Dealer.

3. Payment by Dealer

Dealer shall pay Chevrolet for each shipment of new Chevrolet motor vehicles and chassis, Dealer's price established by Chevrolet and in effect at the time of such shipment, together with a factory handling charge determined by

Chevrolet, which shall include reimbursement to Chevrolet for any tax which it has paid, incurred or agreed to pay on any such motor vehicles or chassis, on the following terms: Cash, sight draft, or sight draft with bill of lading attached payable with collection charges. Dealer shall pay interest on all drafts in the amounts and from the dates specified therein.

4. Car Shipments

A. Mode of Shipment

To integrate the shipment of assembled vehicles from plant sites with continuing plant production, to minimize required shipping facilities and areas, and to facilitate and expedite loading and transportation of vehicles by carriers, Chevrolet will select the distribution point and the mode of transportation, but Chevrolet will endeavor, whenever practicable, to follow Dealer's requests with respect to routing and mode of transportation. Chevrolet will prepay all charges, including transportation charges, for the delivery of motor vehicles and chassis made to Dealer hereunder.

B. Delivery Charges

In addition to the prices and charges otherwise provided for herein, Dealer will pay Chevrolet the destination charges established by Chevrolet and in effect at the time of shipment for motor vehicles and chassis delivered to Dealer hereunder. Chevrolet has the right at any time to change destination charges, to issue new applicable bulletins, and, if necessary, new applicable Price Lists.

[fol. 1141] *C. Liability for Demurrage*

Dealer shall be responsible for and shall pay any and all charges for demurrage, storage, or other charges accruing after arrival of such shipment at destination.

D. Diversion

If diversions are made upon Dealer's request or as a result of Dealer's failure or refusal to accept motor vehicles or chassis that may be shipped Dealer on Dealer's orders, unless such failure or refusal is excusable under the provisions of Section 2D hereof, Dealer will assume responsi-

bility for and pay the additional charges and expenses incident to such diversion.

E. Claims

All claims for loss of or damage to shipments of motor vehicles and chassis shipped hereunder while in the possession of the transportation agency shall be submitted to Chevrolet by Dealer within twenty (20) days after date of delivery of shipment to Dealer.

5. Change in Pricing

A. Right to Change Prices

Chevrolet has the right at any time to change prices, discounts, terms and provisions affecting any current models or body types of motor vehicles or chassis, and to issue new applicable Price Lists or bulletins.

If Chevrolet changes prices, discounts, terms and provisions, such changed prices, discounts, terms and provisions shall apply to all motor vehicles and chassis ordered by Dealer and unshipped by Chevrolet at the time that the same are made effective by Chevrolet.

B. Price Increases

Except with respect to the pricing of new yearly models or body types at the introduction thereof, Chevrolet shall give written notice to Dealer of any change increasing the price to be paid by Dealer before shipping any current motor vehicles or chassis to which such change is applicable. Upon receipt of such notice, Dealer may cancel or modify orders for motor vehicles or chassis to which any such change applies, provided written notice of cancellation is delivered to Chevrolet within ten (10) days after receipt by Dealer of Chevrolet's notice. All unshipped orders not cancelled as provided herein shall remain in effect for delivery in accordance with said change.

C. Price Reductions

If Chevrolet reduces the price on any of its current models or body types of motor vehicles or chassis, Chevrolet will refund or credit as an allowance to Dealer on all new and unused motor vehicles and chassis of current model and body type, purchased from Chevrolet or purchased from

another authorized Chevrolet dealer during the twelve (12) months immediately preceding the date of such reduction and carried in Dealer's stock as new and unsold at the time such reduction is made, an amount equal to the difference between the price Dealer shall have paid Chevrolet, or would have paid Chevrolet if such units had been purchased from Chevrolet, for any such motor vehicles or chassis and the reduced amount then payable for the same; provided, however, that no refund will be made upon any motor vehicle or chassis used by Dealer for demonstration purposes, nor will any such refund be granted unless written claim therefor, properly documented with supporting data, be made by Dealer in writing within thirty (30) days from the date [fol. 1142] that such reduction becomes effective. In the case of motor vehicles or chassis purchased by Dealer under a title retaining instrument Chevrolet reserves the right to pay such difference in price to the holder of the instrument for account of Dealer.

6. Model Change

In the event that Chevrolet shall, at any time, discontinue current models and body types of Chevrolet motor vehicles or chassis, and substitute in place thereof new models and body types, Chevrolet will make an allowance to Dealer on the total number of new unused motor vehicles and chassis of such discontinued models or body types purchased from Chevrolet, or from another authorized Chevrolet dealer, prior to such model change and still in Dealer's stock unsold on the date hereinafter specified.

The amount of such allowance and the time of payment shall be determined by Chevrolet. Such allowance, however, shall in no case be less than five per cent (5%) of the list price of Chevrolet motor vehicles and chassis of such models and body types about to be discontinued.

The allowance will not be made on any motor vehicles or chassis used by Dealer for demonstration purposes.

The date on which Dealer's stock of discontinued models shall be determined shall be either the Announcement Day designated by Chevrolet on which the new models and body types are officially announced to the general public (local preview announcements excepted), or a date prior thereto designated by Chevrolet.

All claims for the allowance must be made in writing within thirty (30) days from the Announcement Day or the prior date designated by Chevrolet, as the case may be, and must be properly documented with supporting data. If Chevrolet elects to designate a date prior to Announcement Day, Chevrolet will make the same allowance with respect to purchases by Dealer from Chevrolet of corresponding Chevrolet motor vehicles and chassis of those models and body types about to be discontinued made between said designated date and Announcement Day.

7. Model Change at Reduced List Price

If, at the time new models or body types are announced, the list prices of such new models or body types are reduced from the list prices of the same model or body type of the discontinued series, Chevrolet will refund or credit to Dealer a proportionate amount on the price paid to Chevrolet by Dealer, or the price Dealer would have paid to Chevrolet if such units had been purchased from Chevrolet, for those new unused motor vehicles and chassis of the discontinued series purchased from Chevrolet or purchased from another authorized Chevrolet dealer which are in Dealer's stock unsold at the time such new models and body types are announced, provided, however, that such refund will not be paid in the case of such radical changes in size, design and price as to make such new models and body types, for all practical purposes, a new and different series or line of motor vehicles. In the latter event Chevrolet will make such refund or allowance as shall, in its opinion, seem equitable under the circumstances.

Dealer will be entitled to receive the refund allowable under this Section in addition to such allowance as Dealer may be entitled to under Section 6.

[fol. 1143]

8. Change of Design

Chevrolet may change the design of any new Chevrolet motor vehicle, chassis, accessories or parts thereof at any time without notice and without obligation to make the same or any similar change upon any Chevrolet motor vehicle, chassis, accessories or parts thereof, previously purchased by or shipped to Dealer or being manufactured or sold in accordance with Dealer's orders. Such changes

shall not be considered Model Changes as contemplated by Section 6 hereof.

9. Warranty

There are no warranties, expressed or implied, made by Chevrolet to Dealer on the Chevrolet motor vehicles, chassis or parts furnished hereunder except to the extent comprehended in the following:

"The Manufacturer warrants each new motor vehicle, including all equipment or accessories (except tires) supplied by the Manufacturer, chassis or part manufactured by it to be free from defects in material and workmanship under normal use and service, its obligation under this warranty being limited to making good at its factory any part or parts thereof which shall, within ninety (90) days after delivery of such vehicle to the original purchaser or before such vehicle has been driven 4,000 miles, whichever event shall first occur, be returned to it with transportation charges prepaid and which its examination shall disclose to its satisfaction to have been thus defective; this warranty being expressly in lieu of all other warranties, expressed or implied, and all other obligations or liabilities on its part, and it neither assumes nor authorizes any other person to assume for it any other liability in connection with the sale of its vehicles.

"This warranty shall not apply to any vehicle which shall have been repaired or altered outside of an authorized Chevrolet Service Station in any way so as in the judgment of the Manufacturer to affect its stability and reliability, nor which has been subject to misuse, negligence or accident."

10. Parts and Accessories

A. Selling Rights

Chevrolet hereby grants to Dealer the non-exclusive right to sell new Chevrolet parts and accessories and Chevrolet will sell Dealer direct or through a designated parts warehouse, such new Chevrolet repair parts and accessories.

"Chevrolet parts and accessories" as used in this Agreement are defined as being parts and accessories manufactured by or for Chevrolet, designed for use on Chevrolet

motor vehicles or chassis, and distributed by Chevrolet or any division or subsidiary of General Motors Corporation.

B. Prices

Sale of parts and accessories to Dealer will be made according to the prices, terms and provisions established by Chevrolet and in effect at the time of shipment.

C. Billing and Payment

The parts and accessories account of Dealer is due and payable, as per statement rendered, on or before the date specified by Chevrolet. If Chevrolet for reasons of credit deems it necessary to place shipments on a C.O.D. basis, collection charges, if any, are to be paid by Dealer.

[fol. 1144] D. Return of Defective Parts and Accessories

After notifying Chevrolet and receiving specific shipping instructions therefor from Chevrolet, Dealer may return for credit defective Chevrolet parts and accessories purchased direct from Chevrolet or acquired as the result of performing warranty adjustments in accordance with the provisions of subsection 19F hereof, at the then current dealer net price of such parts or accessories plus ten per cent (10%); such parts and accessories to be packaged or crated and shipped, transportation charges prepaid. Dealer will be reimbursed for transportation charges prepaid by Dealer on authorized shipments of defective parts and accessories.

E. Return of Inactive Parts

In the event Dealer develops an inactive stock of Chevrolet parts, or for any other reason desires to liquidate a portion of its parts stock, Dealer may submit to Chevrolet a list of those parts purchased direct from Chevrolet, in good condition and unused, which Dealer desires to return for credit. Chevrolet shall promptly review said list and notify Dealer as to which parts will be accepted, the prices therefor and the proper shipping instructions. Thereupon Dealer may package or crate and ship such parts, transportation charges prepaid, in accordance with Chevrolet's instructions.

F. Right to Return Parts Within Ninety Days—Accessories Within Thirty Days

Dealer may return any new Chevrolet parts purchased direct from Chevrolet, which are in good condition and unused, for credit within ninety (90) days after receipt thereof by Dealer. Dealer may also return any new Chevrolet accessories, anti-freeze and other service supplies purchased direct from Chevrolet, which are in good condition and unused, for credit within thirty (30) days after receipt thereof by Dealer; provided further, however, that if Dealer shall have purchased accessories direct from Chevrolet for use in connection with specific motor vehicles for which orders have been placed with and accepted by Chevrolet and such motor vehicles are not shipped to Dealer prior to the introduction of new motor vehicle models, thereby cancelling such orders, then to the extent such accessories are not useable on the new models and are in excess of Dealer's requirements they may also be returned to Chevrolet for credit. Such parts, accessories and service supplies shall be packaged or crated and shipped to the destination specified by Chevrolet, transportation charges prepaid. Credit on new Chevrolet parts and accessories will be at Dealer's net cost. Dealer shall be entitled to return accessories whether same were purchased separately or shipped on or with a new Chevrolet motor vehicle.

Dealer, however, will not be entitled to return materials which are acquired or fabricated specially by Chevrolet upon Dealer's order for a particular service order or car, including unlisted parts or assemblies and any cut or fabricated upholstery or trim items.

OPERATING REQUIREMENTS

11. Dealer's Place of Business

In order to provide product representation commensurate with the good will attached to the name "Chevrolet" and to facilitate the proper sale and servicing of Chevrolet motor vehicles, chassis, parts and accessories, Dealer will [fol. 1145] maintain a place of business satisfactory as to appearance and location, and adequate in size and layout for new car sales operations, service operations, parts and

accessories sales and used car sales, and will maintain the business hours customary in the trade.

Once Dealer is established in facilities and at a location mutually satisfactory to Dealer and Chevrolet, Dealer will not move to or establish a new or different location, branch sales office, branch service station, or place of business including any used car lot or location without the prior written approval of Chevrolet.

12. Capital Requirements

Since the amount and structure of working capital and net worth required to handle properly the business to be conducted by Dealer hereunder depends upon many factors, including size of market, sales and service facilities required, anticipated volume and others, and since Chevrolet has set standards for the capital and net worth of all its dealers based on Chevrolet's past experience, Dealer, at the time of execution of this Agreement, shall establish its owned net working capital and net worth in the respective amount and form specified by Chevrolet. If, subsequently due to changed conditions, the amount of owned net working capital or net worth should be materially increased or decreased, or if the way in which either is set up should be changed in any respect for the proper handling of Dealer's business, Dealer and Chevrolet will negotiate to establish a revised amount and structure of working capital or net worth to meet such changed conditions, and Dealer will meet such revised capital requirements within the time agreed upon.

13. Accounts and Records

A. Uniform Accounting System

It is to the mutual interests of Chevrolet and Dealer that uniform accounting systems and practices be maintained by dealers in order that Chevrolet may develop standards of operating performance which will enable dealers to obtain the most satisfactory results from the sales potentials assigned to them, and which will enable Chevrolet to prepare composite dealer profit statements periodically to guide Chevrolet in formulating policies beneficial to the dealers' interests.

Accordingly, Dealer will use and keep up to date a satis-

factory uniform accounting system of a type designated by Chevrolet and will furnish to Chevrolet by the tenth of each month a complete and accurate financial and operating statement with supporting data covering the preceding month's operations, showing the true and actual condition of Dealer's business. Dealer will maintain said system in accordance with the Accounting Manual prescribed by Chevrolet.

B. Examination of Accounts and Records

In order to assure the maintenance of an accounting system of a type designated by Chevrolet, Dealer will permit an examination of its accounts and records to be made by a person or persons, either in the employ of Chevrolet or acceptable to Chevrolet. A copy of the report of such examination will be furnished to both Chevrolet and Dealer.

14. Sale of Motor Vehicles

Dealer shall provide satisfactory sales performance and render satisfactory service to owners in the area described in Paragraph First. Evaluation of Dealer's sales performance [fol. 1146] shall be based on the relationship of Dealer's sales of new Chevrolet passenger cars and trucks in such area, to the sales of other makes of passenger cars and trucks directly competitive therewith both in price and in product in such area, as compared to a similar relationship of the sales of new Chevrolet passenger cars and trucks to other makes of passenger cars and trucks directly competitive therewith specifically in the Chevrolet Zone area wherein Dealer is located, but not necessarily to the exclusion of the Chevrolet Regional area or the National area. Such evaluation shall be based on records generally accepted for such purposes by the automobile industry and shall also take into account other pertinent factors, such as the trend of Dealer's sales performance over a reasonable period of time, the availability and the delivery of Chevrolet passenger cars and trucks to Dealer, and local conditions directly affecting such sales performance.

Where one or more other Chevrolet dealers are located within the area described in Paragraph First, the evaluation of the combined sales performance of all Chevrolet dealers in such area shall be made as provided above, and

Dealer shall contribute its fair share to the sales performance rating for the area. In evaluating Dealer's contribution to the sales performance rating for such area consideration shall be given to such factors as Dealer's sales performance over a reasonable period of time, the availability and delivery of Chevrolet passenger cars and trucks to Dealer, the geographic location of Dealer's place of business and the general shopping habits of the buying public within such area, Dealer's sales participation experience within such area, and Dealer's standard of sales participation within such area (if any) previously determined and accepted by Dealer and Chevrolet.

15. Sales Staff

Dealer shall maintain a staff of salesmen and a selling and customer relations organization adequate to take care of the sales potential of the area described in Paragraph First.

16. Sales and Service Records

In furtherance of the purposes, objectives, and obligations provided for in this Agreement, Dealer will keep complete and up-to-date records regarding the sale and servicing of new Chevrolet motor vehicles and chassis and will permit Chevrolet at all reasonable times in business hours to inspect such records.

17. Customer Complaints

Dealer will receive, investigate and handle all complaints received from customers or prospective customers with a view to securing and maintaining the good will of the public toward Dealer, Chevrolet and Chevrolet products.

18. Treatment of Purchasers

A. Informing Purchasers as to Details of Their Purchases

Dealer will inform retail purchasers of Dealer's delivered prices and will give them itemized invoices covering the details of their purchases.

B. Representations as to Contents of Charges

Dealer will not make any misleading statements or misrepresentations as to the items making up its total selling

price, or as to the prices related to such items, nor make any statements intended to lead any purchaser to believe [fol. 1147] that a greater portion of the selling price of a new Chevrolet motor vehicle or chassis represents destination charges and factory handling charges than the amounts of such items actually charged to and paid for by Dealer.

C. Right of Retail Purchaser to Buy a New Car Without Purchasing Optional Equipment or Accessories

Dealer recognizes that a retail customer has the right to purchase new Chevrolet motor vehicles without being required to purchase any optional equipment of accessories and Dealer, therefore, will either remove any optional equipment or accessories which the purchaser does not want, or will immediately order a new Chevrolet motor vehicle without such optional equipment or accessories.

D. Advertising

Both Chevrolet and Dealer recognize the need of maintaining the highest standards of ethical advertising at all times in order to secure and maintain public confidence in Dealer, Chevrolet and Chevrolet products.

Accordingly, Chevrolet will not publish, cause to be published, encourage or approve any advertising relating to Chevrolet products which is likely to mislead or deceive the public, and Dealer will not publish, cause to be published or approve any advertising relating to Dealer's sale of Chevrolet products which is likely to mislead or deceive the public.

19. Care of Owner

A. Conditioning of New Motor Vehicles

Dealer will condition each new motor vehicle and chassis before delivery, in accordance with Chevrolet's pre-delivery inspection schedule.

B. Owner's Service Policy

Dealer will execute and deliver to each person who purchases a new Chevrolet motor vehicle or chassis from Dealer, an "Owner's Service Policy", on forms furnished by Chevrolet. Dealer will promptly perform and fulfill all

the terms and conditions of said Policy and authorizes Chevrolet to charge its account at the uniform rate established by Chevrolet for coupons covering inspections on new Chevrolet motor vehicles sold by Dealer and performed by other Chevrolet dealers under such "Owner's Service Policy".

C. Stock of Parts

Dealer will carry in stock at all times during the life of this Agreement an adequate number and and assortment of parts and accessories to render proper service to owners of Chevrolet motor vehicles and chassis.

D. Representations as to Parts

Dealer will not sell, offer for sale, or use in the repair of Chevrolet motor vehicles and chassis as new Chevrolet repair parts, any part or parts which are not in fact new Chevrolet repair parts as defined in subsection A of Section 10 of this Agreement.

E. Mechanical Staff

Dealer will employ a sufficient number of competent mechanics to meet adequately the service requirements of the Chevrolet owners.

F. Warranty Adjustment

Dealer will replace any defective part or parts in fulfillment of the warranty set forth in Section 9 hereof without expense to the owners of such vehicles. For such warranty work and for other policy and warranty work performed [fol. 1148] by Dealer for Chevrolet's account Chevrolet will reimburse Dealer therefor as follows:

Parts: If the replaced part or parts are returned to and found by Chevrolet to be defective, Chevrolet will pay or credit to Dealer an amount equal to the then current Dealer net price of such part or parts plus ten per cent (10%). The return of such parts to Chevrolet shall be made in accordance with the provisions of subsection 10D hereof.

Labor: Chevrolet will pay or credit Dealer on the basis of the Chevrolet Flat Rate System of time allotments as recommended and furnished by Chevrolet at one

hundred per cent (100%) of the labor rates related thereto as agreed upon with Chevrolet.

G. Customer Relationship

Dealer will make every reasonable effort to satisfy owners of Chevrolet motor vehicles and chassis and all persons purchasing Chevrolet motor vehicles and chassis from Dealer, and will establish regular contact either by correspondence or personal interview, with such owners or purchasers. All complaints received by Dealer, which cannot be readily remedied, shall be promptly reported in detail to Chevrolet.

20. Signs

Dealer will purchase, erect, and maintain at Dealer's expense the following signs:

A. Product Sign

A standard product electric sign in a conspicuous place outside Dealer's showrooms provided the erection thereof is not prohibited by municipal ordinance or statute.

B. Service Sign

A standard authorized service sign in a suitable location on the outside of Dealer's place of business.

C. Other Necessary Signs

Such other signs as are necessary to advertise Dealer's business properly on a basis mutually satisfactory to both Chevrolet and Dealer.

Chevrolet Name and Trade-Marks

A. Chevrolet's Exclusive Rights

Chevrolet is entitled to the use of the word "Chevrolet", and the Chevrolet trade-mark or trade-marks, including the distinctive outline or form thereof, as applied to motor vehicles and chassis, parts and accessories.

B. Discontinuance of Use Upon Termination

If the word "Chevrolet" is used in the name under which Dealer's business is conducted or the word "Chevrolet" or

any Chevrolet trade-mark, including the distinctive outline or form thereof, is used in any sign or advertising displayed by Dealer, Dealer will, upon termination of this Agreement, or upon the request of Chevrolet, discontinue the use of the same. Thereafter Dealer will not use, either directly or indirectly, in connection with any motor vehicle business, any Chevrolet trade-mark, including the distinctive outline or form thereof, the word "Chevrolet" or any other name, title, expression or mark so nearly resembling the same as to be likely to lead to confusion or uncertainty, or to deceive the public. If Dealer is a corporation in whose corporate name the word "Chevrolet" is used, Dealer will promptly have the corporate name changed, eliminating said word "Chevrolet" therefrom.

[fol. 1149] *C. Dealer's Liability for Failure to Discontinue Use*

If Dealer, after termination of this Agreement, shall refuse or neglect to keep and perform the provisions of subsection B above, Dealer shall reimburse Chevrolet for all costs, attorneys' fees and other expenses incurred by Chevrolet in connection with legal action to require Dealer to comply therewith.

22. Advertising and Promotional Fund

In order to give Chevrolet dealers the advantage of a comprehensive and coordinated dealer advertising program, an Advertising and Promotional Fund, composed of a dealer portion and a factory portion, has been established and is administered by Chevrolet in accordance with the provisions set forth in the Chevrolet Dealer Price List.

A. Dealer Contributions

Chevrolet will collect the amount set forth in the Chevrolet Dealer Price List as the "Dealer Contribution" for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer, and such amount will be credited to the dealer portion of the Fund for the account of Dealer.

B. Factory Contributions

Chevrolet will pay into the Fund the amount set forth in the Chevrolet Dealer Price List as the "Factory Contribu-

tion" for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer, and such amount will be credited to the factory portion of the Fund.

C. Modification of Advertising Program

During the term of this Agreement the provisions of the aforesaid advertising program may be modified from time to time either to limit its application and coverage or to broaden its application and coverage to include such items as sales promotional activities. Likewise, the amount of the Dealer and Factory Contributions for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer may be increased or decreased from time to time with the announcement of new yearly model motor vehicles to compensate for increases or decreases in advertising and other costs; provided, however, that the amount of the Factory Contribution to the Fund for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer shall at no time be less than fifty per cent (50%) of the amount of the Dealer Contribution for each such motor vehicle and chassis.

TERMINATION OF AGREEMENT

23. Termination

A. Termination by Dealer

Dealer may terminate this Agreement by written notice of termination delivered to Chevrolet, such termination to be effective one (1) month after receipt by Chevrolet of such notice.

B. Termination for Cause

(1) If Chevrolet or Dealer requires a license for the performance of any obligation under or in connection with this Agreement in any state or jurisdiction where this Agreement is to be performed, then and in such event if either of the parties shall fail to secure or maintain a license or [fol. 1150] renewal thereof or if such license shall be suspended or revoked, irrespective of the cause or reason therefor, either party may immediately terminate this Agreement by giving to the other party written notice of such termination.

(2) If Dealer does not conduct its business in accordance with any requirement set forth in Sections 11 through 17, inclusive, or Section 19 of this Agreement, Chevrolet may terminate this Agreement by giving to Dealer written notice of termination to be effective three (3) months after receipt of such notice.

(3) In the event of the death or incapacity of Dealer or any person named in Paragraph Third hereof Chevrolet may terminate this Agreement. However, to facilitate an orderly termination of the business relationships between Chevrolet and Dealer and any contemplated liquidation of the business of the dealership, Chevrolet will, upon receipt of written request therefor made by the executor(s), administrator(s) or representative(s) of the deceased or incapacitated person within thirty (30) days from the date of such death or incapacity, defer the exercise of such right to terminate and will continue to operate with Dealer under the terms of this Agreement for a period, to be determined by Chevrolet, of not less than ninety (90) days and not more than one (1) year from the date of such death or incapacity and this Agreement will terminate at the expiration of such period. If such written request is not received by Chevrolet within such thirty (30) day period, Chevrolet may then terminate this Agreement.

(4) Chevrolet may terminate this Agreement immediately by delivering to Dealer or its representative written notice of such termination in the event of the happening of any of the following:

a. Removal, resignation, withdrawal or elimination from Dealer or dealership for any reason of any person named in Paragraph Third of this Agreement.

b. Any attempted transfer or assignment of this Agreement or any right or obligation hereunder.

c. Any misrepresentation to Chevrolet as to the direct and/or indirect ownership of Dealer, or any sale, transfer, relinquishment, voluntary or involuntary, by operation of law or otherwise, of any interest in the direct or indirect ownership or active management of Dealer without the prior written approval of Chevrolet.

d. Any dispute, disagreement, or controversy between

or among principals, partners, managers, officers or stockholders of Dealer which may adversely affect the ownership, operation, management, business or interest of dealer, dealership, or Chevrolet.

e. Insolvency of Dealer; filing of a voluntary petition in bankruptcy by Dealer; filing of a petition to have Dealer declared bankrupt, provided that it is not vacated within thirty (30) days from date of filing; appointment of a receiver or trustee for Dealer, provided such appointment is not vacated within thirty (30) days from the date of such appointment; execution by Dealer of an assignment for the benefit of creditors.

f. Conviction of Dealer or any principal officer, principal stockholder or manager of Dealer or any partner in Dealer or dealership of any crime which, in the opinion of Chevrolet, may adversely affect the good will or interests of Dealer, dealership or Chevrolet.

g. Failure of Dealer to maintain dealership operation as a going business, open during customary business hours, for seven consecutive business days, provided such failure is not due to causes beyond Dealer's control and is without Dealer's fault or negligence.

24. Transactions After Termination

A. Effect of Termination on Orders

In the event that a new Selling Agreement is not entered into by the parties upon expiration of this Agreement or in the event that this Agreement is terminated in accordance with any provision of Section 23, all orders of Dealer for motor vehicles, chassis, parts and accessories then outstanding shall be automatically cancelled. Termination of this Agreement shall not release Dealer, however, from the obligation to pay sum which may then be owing Chevrolet or from the obligation to pay for any motor vehicle, chassis, or equipment for same which is special, as defined in subsection C of Section 2 of this Agreement, and which may have been ordered by Dealer and not shipped prior to any termination of this agreement.

B. Termination Deliveries

In the event of termination of this Agreement under the provisions of subsection A of Section 23, or subsection B(3) of Section 23 without any deferment of termination as provided for therein, but not otherwise, Chevrolet will use its best efforts to furnish Dealer with Chevrolet motor vehicles and chassis to fill Dealer's bona fide retail orders on hand on the date of termination not to exceed, however, the total number of motor vehicles and chassis delivered to Dealer by Chevrolet during the three (3) months immediately preceding the effective date of termination, subject, to the following conditions and limitations:

(1) Within ten (10) days following termination, Dealer shall deliver to Chevrolet a written schedule of Dealer's bona fide retail orders on hand on the date of termination. Such schedule shall show the name and address of each retail customer and the details with respect to each motor vehicle ordered, including model, body type, color and accessories and shall specify each bona fide order against which Dealer desires Chevrolet to make delivery up to the total number of motor vehicles required to be delivered by Chevrolet as above described. Those orders for which delivery is thus specified by Dealer, when approved by Chevrolet, shall constitute Dealer's Schedule of Termination Deliveries. No changes or substitution may be made by Dealer in such Schedule of Termination Deliveries and Chevrolet will not be obligated to make deliveries of any motor vehicle to Dealer except as specified therein. In the event of Dealer's failure to deliver to Chevrolet the detailed Schedule above required, Dealer shall have no further rights.

(2) Dealer shall accept any motor vehicle required to be delivered by Chevrolet hereunder against Dealer's Schedule of Termination Deliveries immediately upon [fol. 1152] notification by Chevrolet of the availability to Dealer of such vehicle and in accordance with the terms and conditions of sale established by Chevrolet and in effect at the time of shipment. In the event of its failure to do so, Dealer shall have no further right to receive such vehicle or any other vehicle in lieu of it.

(3) Vehicles shall be delivered by Chevrolet hereunder in substantial accordance with the schedule and basis of delivery in effect with respect to other dealers in the same zone at the time of Dealer's termination.

(4) Dealer shall give Chevrolet notice immediately of cancellation for any reason of any retail order set forth in Dealer's Schedule of Termination Deliveries.

(5) In the event of the cancellation for any reason of any retail order set forth in Dealer's Schedule of Termination Deliveries before delivery by Chevrolet of a motor vehicle to apply against such order, Chevrolet shall be released from any obligation to make delivery of such vehicle.

(6) Dealer shall provide proper and adequate facilities in accordance with the terms and provisions of this Agreement to effect the delivery and handling of motor vehicles to be supplied upon termination under this subsection 24B.

C. Effect of Transactions After Termination

The acceptance of orders from Dealer or the continuance of sale of products to Dealer or any other act of Chevrolet after termination of this Agreement shall not be construed as a renewal of this Agreement for any further term nor as a waiver of the termination.

D. Rights of Surviving Persons Named in Paragraph Third

If this Agreement should be terminated by Chevrolet under the provisions of subsection 23 B(3) or 23 B(4)a and at the time of such termination another person is named in Paragraph Third on the basis of being qualified as an operator as distinguished from being qualified solely on the basis of a financial interest, and if such other person owns a financial interest of at least twenty-five per cent (25) or acquires such an interest within a reasonable time (considering then existing circumstances) after the date of such termination, then, subject to the provisions of any Widow's Financial Participation Addendum and any Interim Agreement Addendum signed by all parties named in Paragraph Third of this agreement, and unless the right to receive the offer hereinafter provided for has been waived in an Interim

Agreement Addendum by the party otherwise entitled hereunder to receive such offer, Chevrolet shall offer such other person a new Selling Agreement for the unexpired balance of the term of the Selling Agreement being terminated. If more than one other person be named in Paragraph Third at the time of such termination who can qualify under the conditions set forth above for such a new Selling Agreement, such persons must agree in writing as to which one will be offered the new Selling Agreement. If such persons do not agree as to the successor dealer within a reasonable time, Chevrolet shall not be obligated to offer a new or substitute Selling Agreement to any of such persons.

[fol. 1153] 25 Chevrolet's Right to Repurchase When Agreement is Terminated

In the event of termination of this Agreement; or in the event Chevrolet does not offer Dealer a new Selling Agreement upon the expiration of the term of this Agreement:

A. Chevrolet will purchase from Dealer and Dealer will sell to Chevrolet:

Cars (1) All new and unused Chevrolet motor vehicles and chassis of the current model on hand in Dealer's place of business or in Dealer's possession at Dealer's net cost, including destination charges paid to Chevrolet thereon.

Parts (2) All unused and undamaged Chevrolet repair parts listed in Chevrolet's current Dealer Parts and Accessories Price Schedule and purchased direct from Chevrolet, or purchased from an outgoing Chevrolet dealer as a part of Dealer's initial Chevrolet parts inventory, and on hand in Dealer's place of business or in Dealer's possession at the then current dealer net prices plus five per cent (5%) thereof for packing costs and plus reimbursement for transportation charges to destination specified by Chevrolet.

(3) All unused and undamaged Chevrolet accessories and service supplies purchased direct from Chevrolet during the twelve (12) month period immediately preceding the effective date of such ter-

Accessories mination and on hand in Dealer's place of business or in Dealer's possession at the then current dealer net prices plus five per cent (5%) thereof for packing costs and plus reimbursement for transportation charges to destination specified by Chevrolet.

Comm. Bodies (4) All new and unused commercial bodies and cabs of current models purchased direct from Chevrolet on hand in Dealer's place of business or in Dealer's possession at Dealer's net prices according to current Price Lists then in force plus transportation charges paid to Chevrolet thereon. In the event that any such commercial bodies or cabs have been mounted on chassis by Dealer, the price to be paid therefor shall be the net price to Dealer for the complete unit according to current list prices, even though Dealer purchased same separately at a higher price.

Signs (5) Any signs belonging to Dealer of a type recommended in writing by Chevrolet and bearing the word "Chevrolet", at a price mutually agreed upon by Chevrolet and Dealer. If Chevrolet and Dealer cannot agree on a price, they shall select a third party who shall set the price.

If Dealer desires to sell the same, Chevrolet will purchase all the special tools of a type recommended by Chevrolet and designed specifically for service of Chevrolet motor vehicles which were purchased by Dealer during the three (3) year period immediately preceding termination, while Dealer has been operating under a Chevrolet Selling Agreement [fol. 1154] ment, at a price mutually agreed upon by Chevrolet and Dealer. If Chevrolet and Dealer cannot agree on a price, they shall select a third party who shall set the price.

C. Dealer shall, within thirty (30) days following the date of termination, furnish Chevrolet with a list of the motor vehicles, chassis, parts, accessories, signs and tools aforesaid.

D. Upon demand and tender by Chevrolet of the purchase price determined as aforesaid, Dealer will deliver such goods to Chevrolet forthwith in accordance with Chevrolet's instructions.

E. Dealer shall execute and deliver to Chevrolet any instruments necessary to convey title to the aforesaid property. If such property is subject to lien or charge of any kind Dealer will procure the discharge and satisfaction thereof prior to the repurchase of such property by Chevrolet.

26. Loss on Premises

A. Premises Owned by Dealer

1. Terminations to Which Applicable

In the event of termination of this Agreement by Chevrolet under the provisions of subsection B (2) of Section 23 hereof, or in the event Chevrolet terminates this Agreement because of Chevrolet's failure to secure or maintain any required license or renewal thereof as provided in subsection B (1) of Section 23 hereof, or in the event Chevrolet terminates this Agreement because of the incapacity, for reasons of health, of Dealer or any person named in Paragraph Third of the Agreement, or in the event Chevrolet does not offer Dealer a new Selling Agreement upon the expiration of the term of this Agreement, but not otherwise, the provisions of this subsection 26A shall apply.

2. Premises to Which Applicable

The provisions of this subsection 26A shall be applicable only to premises which are owned by Dealer and carried on Dealer's books and records as land and building assets at the time that Dealer first has knowledge that a termination on one of the bases specified in subsection 26A1 above will become effective, and which are used by Dealer solely in the performance of Dealer's obligations under this Agreement, or solely in the performance of Dealer's obligations under this Agreement and one or more other dealer or distributor Agreements with Pontiac, Oldsmobile, Buick, Cadillac or GMC Truck & Coach Divisions of General Motors Corporation, if any, and such one or more other dealer or distributor Agreements are terminated simultaneously with the termination of this Agreement.

3. Chevrolet's Obligation

Upon the written request of Dealer made to Chevrolet within the time hereinafter specified, Chevrolet will assist

Dealer in the orderly disposition of the aforesaid premises, to the end that the equities of Dealer will be protected, and Dealer will not suffer a loss on said premises in relation to the market value thereof as of the time of termination. In effecting such disposition of Dealer's premises under the [fol. 1155] provisions of this subsection 26A3 the following conditions shall apply:

- (a) Dealer's application for assistance will include a written representation to Chevrolet of Dealer's intention to retire from the business of selling new or used motor vehicles in the general selling area wherein Dealer operated under this Selling Agreement.
- (b) The assistance to be provided by Chevrolet hereunder will be in the form of either locating a purchaser who will offer to purchase Dealer's premises at a fair and reasonable price as hereinafter defined, or locating a lessee for Dealer who will offer to lease Dealer's premises for a reasonable term at a fair and reasonable rental as hereinafter defined. Moreover, if Chevrolet does not locate such a purchaser or lessee within a reasonable time, Chevrolet will offer either to purchase or lease Dealer's premises at such fair and reasonable purchase price or rental.
- (c) In establishing fair and reasonable prices for Dealer's premises for the purpose of the sale or lease thereof, consideration will be given (i) to the circumstances under which the premises were originally provided by Dealer for the performance of this Selling Agreement or any prior Chevrolet Selling Agreement; (ii) to the adequacy of the premises for a Chevrolet Dealer Selling Agreement and the length of time such facilities have been used by Dealer in the performance of this Agreement or any other dealer or distributor Selling Agreement; and (iii) to the fair appraised value of the premises as determined by the average of the independent appraisals of three qualified real estate appraisers, of whom Dealer and Chevrolet shall each select one, and the two thus selected shall in turn select the third. Based on these con-

siderations Dealer and Chevrolet shall agree upon a fair and reasonable purchase price and rental value for Dealer's premises.

- (d) Upon receipt of a bona fide offer from a prospective purchaser or a prospective lessee, as the case may be, Dealer will sell Dealer's premises at the purchase price established as provided above or will lease Dealer's premises for a reasonable term at the rental established as provided above. The failure of Dealer to accept such a bona fide offer from a prospective purchaser or from a prospective lessee shall constitute a complete release of Chevrolet from any obligation to purchase or lease Dealer's premises as aforesaid and any other obligations under this subsection 26A.
- (e) Any application for assistance from Chevrolet under the provisions of this subsection 26A must be made to Chevrolet in writing within thirty (30) days from the effective date of termination, and if Chevrolet does not receive a written application [fol. 1156] for such assistance within that time, Chevrolet shall be released from any and all obligations hereunder.

B. Premises Leased by Dealer

1. Terminations to Which Applicable

In the event of termination of this Agreement by Chevrolet under the provisions of subsection B(2) or B(3) of Section 23 hereof, or in the event Chevrolet terminates this Agreement because of Chevrolet's failure to secure or maintain any required license or renewal thereof as provided in subsection B(1) of Section 23 hereof, or in the event Chevrolet does not offer Dealer a new Selling Agreement upon the expiration of the term of this Agreement, but not otherwise, the provisions of this subsection 26B shall apply.

2. Premises to Which Applicable

The provisions of this subsection 26B shall be applicable only to premises leased by Dealer and used by Dealer solely in the performance of Dealer's obligations under this Agreement, or solely in the performance of Dealer's obligations under this Agreement and one or more other dealer

or distributor Agreements with Pontiac, Oldsmobile, Buick, Cadillac or GMC Truck & Coach Divisions of General Motors Corporation, if any, and such one or more other dealer or distributor Agreements are terminated simultaneously with the termination of this Agreement; provided, moreover, that the premises involved shall have been leased by Dealer, and the lease or leases shall have been in effect, prior to the time Dealer had knowledge that a termination on one of the bases specified in subsection 26B 1 above would become effective, and the lease or leases of the premises shall continue subsequent to the effective date of termination of this Agreement.

3. Chevrolet's Obligation

Upon the written request of Dealer made to Chevrolet within the time hereinafter specified, Chevrolet will endeavor to assist Dealer in the liquidation of Dealer's obligation under any existing lease or leases of the aforesaid premises, to the end that the equities of Dealer will be protected and the normal losses incident to the liquidation of a business will be minimized. In providing such assistance to Dealer, the following conditions shall apply:

- (a) Dealer's application for assistance will include a written representation to Chevrolet of Dealer's intention to retire from the business of selling new or used motor vehicles in the general selling area wherein Dealer operated under this Selling Agreement.
- (b) The assistance to be provided by Chevrolet hereunder will be in the form of (i) locating a tenant or tenants, satisfactory to the Lessor or Lessors, who will offer to sublet the premises for the balance of the term of the lease or leases or who will take an assignment and assume the obligations of such lease or leases; or (ii) effecting arrangements satisfactory to Chevrolet and the Lessor [fol. 1157] or Lessors whereby the lease or leases with Dealer will be cancelled; or (iii) the subletting by Chevrolet of the premises from Dealer, provided that the unexpired term of the lease or leases shall not be in excess of twelve (12) months from the effective date of termination of this Agreement.

In the event Chevrolet does not locate a sublessee or assignee, or arrange for the cancellation of Dealer's lease or leases, or sublet the premises, as provided above, Chevrolet will pay as reimbursement to Dealer for the monthly rental specified in Dealer's lease and paid by Dealer for a period of twelve (12) months after the effective date of termination, or for the balance of the term of the lease, whichever shall be the lesser, (1) a fair monthly rental, as of the date of termination, as determined by three real estate appraisers, one selected by Chevrolet, one selected by Dealer and the third selected by the other two appraisers, or, at the option of Chevrolet, (2) the monthly rental specified in the lease.

- (c) If, for a period of more than one (1) month immediately following the effective date of termination, the premises involved or any part thereof are occupied by Dealer or by anyone else for business or any other purpose, Chevrolet will be discharged from its obligation hereunder to reimburse Dealer for rental paid as aforesaid with respect to any month for any part of which the premises or any part thereof are so occupied; provided, however, that where the dealership premises consist of more than one parcel of property or more than one building, each of which is separately usable, distinct and apart from the whole premises or any other part thereof, with appropriate ingress and egress, each such parcel or building may be considered separately for the purpose of this subsection 26B3(c).
- (d) If requested by Chevrolet, Dealer shall use its best efforts to effect a settlement of any lease or leases with the Lessor or Lessors to the same extent as if Chevrolet were not obligated, as provided herein, to assist Dealer in the liquidation of Dealer's obligations under any existing lease or leases, but any settlement shall be approved by Chevrolet before being finally accepted by Dealer. Any reduction in rental as a result of any such settlement shall proportionately reduce Chevrolet's obligation hereunder.

- (e) If the premises involved are also used by Dealer in the performance of Dealer's obligations under one or more other dealer or distributor Agreements with Pontiac, Oldsmobile, Buick, Cadillac or GMC Truck & Coach Divisions of General Motors Corporation, which are terminated simultaneously with the termination of this Agreement, such other Division or Divisions of General Motors Corporation will arrange with Chevrolet as [fol. 1158] to which Division will assume the obligations to Dealer under this subsection 26B, and Dealer will be so notified in writing.
- (f) Upon receipt of a bona fide offer from a prospective tenant or tenants satisfactory to the Lessor or Lessors, Dealer will sublet Dealer's premises or assign the lease or leases thereon. In the event Chevrolet arranges a cancellation of the lease or leases on Dealer's premises without cost to Dealer, Dealer will execute a cancellation agreement with the Lessor or Lessors. The failure of Dealer to sublet the premises, to assign the lease or leases, to execute a cancellation agreement with the Lessor or Lessors or to use its best efforts if requested, to effect a settlement, all as provided above, shall constitute a complete release of Chevrolet from any further obligations under this subsection 26B.
- (g) Any application for assistance from Chevrolet under the provisions of this subsection 26B must be made to Chevrolet in writing within thirty (30) days from the effective date of termination, and if Chevrolet does not receive a written application for such assistance within that time, Chevrolet shall be released from any and all obligations hereunder.
- (h) In the event Dealer's obligations under existing leases are not otherwise liquidated and Dealer is entitled to reimbursement from Chevrolet under the provisions hereof for any rentals paid by Dealer, Dealer shall file its claim for such reimbursement with Chevrolet within two (2) months after the expiration of the period covered by such

claim. Chevrolet shall have access to and may audit Dealer's books and records insofar as may be necessary to verify claims filed under this subsection 26B.

- (i) The term "Dealer" as used herein shall be interpreted to include Dealer's executor(s), administrator(s) or representative(s) in the event the Selling Agreement is terminated in accordance with the provisions of subsection B(3) of Section 23 hereof.

C. Negotiations

The provisions of subsections 26A and 26B dealing as they do with situations as they will arise in the future must of necessity be stated in broad terms, and to accomplish the fair and equitable results intended all negotiations and transactions contemplated by subsections 26A and 26B will be carried on in the utmost of good faith on the respective parts of both Dealer and Chevrolet.

D. Termination Due to Death of Dealer

If this Agreement is terminated due to the death of Dealer or any person named in Paragraph Third hereof, Chevrolet, if requested to do so, and without assuming any legal obligations or liability with respect thereto, will render assistance to the representatives of the estate of Dealer in locating a purchaser or lessee for any premises owned by Dealer and used in the performance of Dealer's obligations under this Agreement at the time of said termination.

[fol. 1159]

GENERAL PROVISIONS

27. Supplemental Provisions

In view of the extended term of this Agreement and the desire of Dealer and Chevrolet to keep the provisions hereof current with the distribution practices in the automobile industry, which practices may vary from time to time as the result of the enactment of federal or state laws or new or different interpretations by the courts or governmental agencies of existing laws, it is agreed that this Agreement may be supplemented at any time to include provisions relating to the general subject matters of "bootlegging",

"territory security" and "service responsibility", as those terms have been used or interpreted by Congressional Committees or Subcommittees in hearings or in proposed legislation, provided that such supplemental provisions are incorporated in the Selling Agreements of all other Chevrolet dealers, in jurisdictions in which such provisions are not prohibited by state or local laws.

28. Dealer Not Made Agent or Legal Representative of Chevrolet

This Agreement of which these Terms and Conditions are a part does not constitute Dealer the agent or legal representative of Chevrolet for any purpose whatsoever. Dealer is not granted any express or implied right or authority to assume or to create any obligation or responsibility in behalf of or in the name of Chevrolet or to bind Chevrolet in any manner or thing whatsoever.

29. Responsibility for Dealer's Commitments

Except insofar as it is specifically provided otherwise in this Agreement, Dealer shall be solely responsible for any and all obligations or responsibilities incurred or assumed by Dealer in the performance of this Agreement.

30. Local Taxes

Dealer hereby certifies that all motor vehicles and chassis, parts, accessories and items similar thereto purchased from Chevrolet are for resale in the course of Dealer's business. Dealer further certifies that Dealer has obtained any license require to collect sales or use taxes incurred in any such resale transactions, and that the number, if any, of such license has been or will be furnished to Chevrolet. Dealer agrees, as to any such motor vehicles and chassis, parts, accessories or items similar thereto which are withdrawn from stock and put to a taxable use in lieu of or prior to resale, and as to any tangible property which Dealer purchases for use and not for resale, to pay directly to the appropriate taxing authority any sales, use or similar taxes incurred by such use or purchase, to file any tax returns required in connection therewith, and to hold Chevrolet harmless from any claims or demands made by such taxing authority with respect thereto.

31. Notices

Any notice required to be given by either party to the other under or in connection with this Agreement shall be in writing and delivered personally or by mail. Notices to Dealer shall be directed to Dealer, or its representative at Dealer's place of business; notices to Chevrolet shall be directed to the Zone Manager of the area in which Dealer is located.

[fol. 1160] 32. No Implied Waivers

The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other such provision nor constitute a waiver of the provision itself.

33. Applicable Law

This Agreement is to be governed by and construed according to the laws of the State of Michigan. If, however, any provision in anywise contravenes the laws of any state or jurisdiction where this Agreement is to be performed, such provision shall be deemed not to be a part of this Agreement therein.

34. Sole Agreement of Parties

There are no other agreements or understandings, either oral or in writing, between the parties affecting this Agreement or relating to the sale or servicing of Chevrolet motor vehicles, chassis, parts or accessories.

This Agreement cancels and supersedes all previous agreements between the parties.

No change in, addition to, or erasure of any printed portion of this Agreement (except the filling in of blank lines) shall be valid or binding upon Chevrolet unless the same is approved in writing by the General Sales Manager of Chevrolet.

No agreement between the parties which is at variance with any of the provisions of this Agreement or which imposes definite obligations upon either party not specifically

imposed by this Agreement or which is intended to be effective or performed following the expiration or other termination of this Agreement and imposes obligations or extends the time for performance thereof other than as provided in this Agreement shall be binding upon either party unless it bears the facsimile signature of the General Sales Manager and, except for Dealer Price Lists, is countersigned by an Assistant General Sales Manager, a Regional Manager, an Assistant Regional Manager or Zone Manager of Chevrolet, and is executed or accepted by Dealer.

[fol. 1161] EXHIBIT 3.2 TO STIPULATION OF FACTS
NUMBER ONE

GENERAL MOTORS CORPORATION
Chevrolet Motor Division

Dealer Selling Agreement

[fol. 116

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[fol. 1163] Attach Signatural Attachment to This Page.

[fol. 1164] Form No. GSD-T-202-60

U.S.A. 8-60

CHEVROLET MOTOR DIVISION
General Motors Corporation

Terms and Conditions

Dealer

The following Terms and Conditions have by reference been incorporated in and made a part of the Selling Agreement which shall apply to and govern all transactions, dealings and relations between the parties:

DEFINITIONS AND SELLING PRIVILEGE

1. Definitions

As used in this Agreement, the following terms shall have the following meanings:

"Chevrolet motor vehicles" and "motor vehicles" shall mean new passenger cars, trucks and chassis manufactured and distributed by Chevrolet Motor Division of General Motors Corporation;

"Chevrolet parts and accessories" shall mean parts and accessories manufactured by or for Chevrolet, designed for use on Chevrolet motor vehicles and distributed by Chevrolet or any Division or subsidiary of General Motors Corporation; and

"Area of sales responsibility" and "area of service responsibility" shall mean the area described in Paragraph First of this Agreement.

2. Dealer's Selling Privilege

Dealer is granted the non-exclusive privilege of selling new Chevrolet motor vehicles, parts and accessories, and, subject to the provisions of Section 16 hereof, Dealer is granted the non-exclusive privilege of displaying the various trademarks and service marks, including "Chevrolet", and the several other word and design marks which Chevrolet uses, in connection with the sale or offering for sale and servicing of Chevrolet motor vehicles, parts and accessories.

[fol.1165] TERMS AND CONDITIONS OF SALE

3. Terms and Conditions of Sale—Motor Vehicles

A. Three Month Estimates of Requirements

To enable Chevrolet to establish production schedules, and to place orders with its suppliers on the basis of the lead time normally required in the automobile mass production industry, and to have such schedules reflect the best combined estimate of Chevrolet and its dealers of Chevrolet motor vehicle requirements for future retail deliveries, Dealer will, unless otherwise advised by Chevrolet, furnish Chevrolet every month, on forms provided by Chevrolet, an estimate of Dealer's requirements of new Chevrolet motor vehicles for the next three (3) calendar months, each month's estimate to be shown separately.

B. Sales Reports

To assist Chevrolet in the evaluation of current market trends and in the adjustment of established future production schedules, as well as current production schedules to the extent possible, Dealer will furnish Chevrolet every ten (10) days with a sales report on forms furnished by Chevrolet. Such report shall show retail sales of both new and used motor vehicles made during said period, new and used motor vehicle stocks, and unfilled orders on hand at the end of said period. Dealer shall also furnish Chevrolet with such daily or interim sales reports, on forms furnished by Chevrolet, as Chevrolet may reasonably require in evaluating current dealer inventories and current distribution schedules.

C. Orders

Dealer shall submit orders for Chevrolet motor vehicles to Chevrolet for acceptance at mutually satisfactory periods. Such orders shall be submitted upon order forms supplied by Chevrolet. Accepted orders for any standard motor vehicles not shipped during the month for which delivery was scheduled will remain in effect unless cancelled in whole or in part by either party upon written notice to the other. However, orders for "special" motor vehicles accepted by Chevrolet for the convenience of Dealer may be cancelled only by Chevrolet.

Any motor vehicle which differs from Chevrolet's standard specifications and/or incorporates special equipment, and which because of such difference in specifications or increase in price has only a limited use or marketability, shall be considered "special".

D. Motor Vehicle Shipments

(1) Mode of Shipment

To integrate the shipment of assembled motor vehicles from plant sites with continuing plant production, to minimize required shipping facilities and storage areas, and to facilitate and expedite loading and transportation of vehicles by carriers, Chevrolet will select the distribution point and the mode of transportation, but Chevrolet will endeavor, whenever practicable, to follow Dealer's requests with respect to routing and mode of transportation.

(2) Delivery Charges

Chevrolet will prepay all charges, including transportation charges, for the delivery of motor vehicles made to Dealer hereunder.

In addition to the prices and charges otherwise provided for herein, Dealer will pay Chevrolet the destination charges established by Chevrolet and in effect at the time of shipment for motor vehicles delivered to Dealer hereunder. Chevrolet has the right at any time to change destination charges, to issue new applicable bulletins, and, if necessary, new applicable Price Lists.

(3) Liability for Demurrage

Dealer shall be responsible for and shall pay any and all charges for demurrage, storage, or other charges accruing after arrival of such shipment at destination.

(4) Diversions

If diversions are made upon Dealer's request or as a result of Dealer's failure or refusal to accept motor vehicles that may be shipped Dealer on Dealer's orders, unless such failure or refusal is excusable under the provisions of subsection B of Section 5 hereof, Dealer will assume responsibility for and pay the additional charges and expenses incident to such diversions.

(5) Claims

All claims for loss of or damage to motor vehicles shipped hereunder while in the possession of the transportation agency shall be submitted to Chevrolet by Dealer within twenty (20) days after date of delivery of shipment to Dealer.

E. Payment by Dealer

Dealer shall pay Chevrolet for each shipment of Chevrolet motor vehicles, Dealer's prices established by Chevrolet and in effect at the time of such shipment, together with a factory handling charge determined by Chevrolet, which shall include reimbursement to Chevrolet for any tax it has paid, incurred or agreed to pay on any such motor vehicles, on the following terms: cash, draft, or sight draft with bill of lading attached payable with collection charges. Dealer shall pay interest on all drafts in the amounts and from the dates specified therein.

F. Right to Change Prices

Chevrolet has the right at any time to change prices, discounts, terms and provisions affecting any Chevrolet motor vehicles and to issue new applicable Price Lists or bulletins.

If Chevrolet changes the prices, discounts, terms or provisions applicable to any motor vehicles, such changed prices, discounts, terms or provisions shall apply to any such motor vehicles ordered by Dealer and not shipped by Chevrolet at the time such change is made effective by Chevrolet.

Except with respect to the pricing of new yearly models or body types at the introduction thereof, Chevrolet shall give written notice to Dealer of any change increasing the price to be paid by Dealer before shipping any current motor vehicles to which such change is applicable. Upon receipt of such notice, Dealer may cancel or modify orders for motor vehicles to which any such change applies, provided written notice of cancellation is delivered to Chevrolet within ten (10) days after receipt by Dealer of Chevrolet's notice. All undelivered orders not cancelled as provided herein shall remain in effect for delivery in accordance with said change.

G. Current Model Price Reduction Allowances

If Chevrolet reduces the list price on any of its current [fol. 1167] models or body types of motor vehicles, Chevrolet will refund or credit as an allowance to Dealer for each new and unused Chevrolet motor vehicle (not including demonstrators) of that model or body type, which on the effective date of such reduction is in Dealer's stock unsold, an amount equal to the difference between Chevrolet's list price, less the applicable dealer base discount thereon, for such vehicle prior to the effective date of such reduction and Chevrolet's list price, less the applicable dealer base discount thereon, for such motor vehicle after the effective date of such reduction.

H. Model Change Allowances

In the event that Chevrolet, at the time of an annual model change, shall discontinue a current model and body type or motor vehicle (hereinafter called "discontinued model motor vehicle") and substitute in place thereof a new model and body type identified by a new model year designation, Chevrolet will make an allowance to Dealer on each new and unused discontinued model motor vehicle (not including demonstrators), which is in Dealer's stock unsold on the day (hereinafter called the "Announcement Day") on which the new model and body type is officially announced by Chevrolet to the general public (local previewing announcements excepted) or on a day prior thereto designated by Chevrolet.

If Chevrolet elects to designate a day prior to Announcement Day, Chevrolet will make the same allowance with respect to each such discontinued model motor vehicle which is purchased by Dealer from Chevrolet between said designated day and the Announcement Day.

The amount of such allowance and the time of payment thereof shall be determined by Chevrolet. Such allowance, however, shall in no case be less than five per cent (5%) of the list price of each such discontinued model motor vehicle.

I. Model Change at Reduced List Price Allowances

If, at the time of an annual model change, the list price of the new model or body type is lower than the list price

of the corresponding discontinued model or body type, Chevrolet will refund or credit as an allowance to Dealer, for each new and unused Chevrolet motor vehicle (not including demonstrators) of the discontinued model or body type, which is in Dealer's stock unsold on the Announcement Day, an amount equal to the difference between Chevrolet's list price, less the applicable dealer base discount thereon, for such motor vehicle and Chevrolet's list price, less the applicable dealer base discount thereon, for the corresponding motor vehicle of the new model or body type.

Chevrolet shall not be required to make any refund or credit to Dealer under this subsection I if the new models and body types are so changed in size, design and price as, for all practical purposes, to make such new models and body types a new and different series or line of motor vehicles. In the latter event, Chevrolet will make such refund or allowance as shall, in its opinion, be equitable under the circumstances.

Dealer will be entitled to receive the allowances provided under this subsection I in addition to the model change allowance to which Dealer is entitled under subsection H hereof.

[fol. 1168] *J. Applications for Model Change and Price Reduction Allowances*

Dealer must submit written application on forms furnished by Chevrolet (1) for the price reduction allowances provided for in subsections G and I of this Section 3 within thirty (30) days from the date the price reduction becomes effective; and (2) for the allowances provided for in subsection H of this Section 3 within thirty (30) days from the Announcement Day of new models or the date prior thereto designated by Chevrolet on which Dealer's stock of discontinued models shall be determined, as the case may be. Each application for allowance must be properly documented with supporting data.

Chevrolet reserves the right to pay any such allowance applicable to a motor vehicle in which a bank or other financing institution may have a security interest directly to such bank or other financing institution.

K. Warranty on Motor Vehicles

There are no warranties, expressed or implied, made by Chevrolet to Dealer on the Chevrolet motor vehicles or chassis furnished hereunder except as follows:

Chevrolet warrants each new motor vehicle and chassis, including all equipment or accessories thereon (except tires), manufactured by it to be free from defects in material and workmanship under normal use and service, Chevrolet's obligation under this warranty being limited to making good any part or parts thereof which shall, within ninety (90) days after delivery of such vehicle or chassis to the original purchaser or before such vehicle or chassis has been driven 4,000 miles, whichever event shall first occur, be returned to Chevrolet with transportation charges prepaid and which Chevrolet's examination shall disclose to its satisfaction to have been thus defective; this warranty being expressly in lieu of all other warranties, expressed or implied, and all other obligations or liabilities on Chevrolet's part, and Chevrolet neither assumes nor authorizes any other person to assume for it any other liability in connection with such motor vehicles or chassis.

This warranty shall not apply to any motor vehicle or chassis which shall have been repaired or altered outside of an authorized Chevrolet dealership in any way so as in the judgment of Chevrolet to affect adversely its performance and reliability, nor which has been subject to misuse, negligence or accident.

4. Terms and Conditions of Sale—Parts and Accessories

A. Sales to Dealer

Chevrolet will sell to Dealer either directly or through a designated parts warehouse, or will make available to Dealer indirectly through other outlets, new Chevrolet parts and accessories.

B. Payment by Dealer

Sale of parts and accessories by Chevrolet to Dealer will be made according to the prices, terms and provisions established by Chevrolet and in effect at the time of shipment.

Payment for parts and accessories is due in accordance with statements rendered by Chevrolet. If Chevrolet for reasons of credit deems it necessary to place shipments on a C.O.D. basis, collection charges, if any, are to be paid by Dealer.

[fol. 1169] *C. Right to Change Prices*

Chevrolet has the right at any time to change prices, discounts, terms and provisions affecting any Chevrolet parts and accessories and to issue new applicable Price Lists or schedules.

If Chevrolet changes the prices, discounts, terms or provisions applicable to any parts or accessories, such changed prices, discounts, terms or provisions shall apply to any such parts or accessories ordered by Dealer and not shipped by Chevrolet at the time such change is made effective by Chevrolet.

D. Warranty on Parts and Accessories

There are no warranties, expressed or implied, made by Chevrolet to Dealer on new Chevrolet parts or accessories furnished hereunder except as follows:

Chevrolet warrants each new Chevrolet part or accessory sold to Dealer hereunder separately, and not as a component part of a motor vehicle or chassis, to be free from defects in material and workmanship under normal use and service, Chevrolet's obligation under this warranty being limited to making good any such part or accessory which shall, within ninety (90) days after sale thereof by Dealer "over-the-counter", or within ninety (90) days after installation thereof by Dealer on a motor vehicle or chassis or before such part or accessory so installed has been used on such motor vehicle or chassis for 4,000 miles after such installation, whichever event shall first occur, be returned to Chevrolet with transportation charges prepaid and which Chevrolet's examination shall disclose to its satisfaction to have been thus defective; this warranty being expressly in lieu of all other warranties, expressed or implied, and all other obligations or liabilities on Chevrolet's part, and Chevrolet neither assumes nor authorizes any other person to assume

for it any other liability in connection with such parts or accessories.

This warranty shall not apply to any part or accessory which is used for a purpose for which it was not designed or which shall have been repaired or altered in any way so as in the judgment of Chevrolet to affect adversely its performance and reliability, nor which has been subject to misuse, negligence or accident.

E. Return of Defective Parts and Accessories

After notifying Chevrolet and receiving specific shipping instructions therefor from Chevrolet, Dealer may return for credit defective parts and accessories purchased directly from Chevrolet or acquired as the result of performing warranty adjustments, at the then current dealer net prices of such parts or accessories plus ten per cent (10%). Such parts and accessories shall be packaged or crated and shipped, transportation charges prepaid. Dealer will be reimbursed for transportation charges prepaid by Dealer on authorized shipments of defective parts and accessories.

F. Return of Inactive Parts

In the event Dealer develops an inactive stock of Chevrolet parts, or for any other reason desires to liquidate a portion of its parts stock, Dealer may submit to Chevrolet [fol. 1170] a list of those parts purchased directly from Chevrolet, in good condition and unused, which Dealer desires to return for credit. Chevrolet shall promptly review said list and notify Dealer as to which parts will be accepted. Thereupon Dealer may package or crate and ship such parts, transportation charges prepaid, in accordance with Chevrolet's instructions. Chevrolet will allow Dealer credit for such parts at the dealer net prices therefor in effect at the time such parts are received by Chevrolet, less applicable stock order allowances thereon, if any, whether or not any such stock order allowances were made to Dealer when the parts were purchased by Dealer.

G. Right to Return Parts within Ninety Days—Accessories within Thirty Days

Dealer may return any new parts purchased directly from Chevrolet, which are in good condition and unused, for

credit within ninety (90) days after receipt thereof by Dealer. Dealer may also return any new accessories, anti-freeze and other service supplies purchased directly from Chevrolet, which are in good condition and unused, for credit within thirty (30) days after receipt thereof by Dealer; provided, however, that if Dealer shall have purchased accessories directly from Chevrolet for use in connection with specific motor vehicles for which orders have been placed with and accepted by Chevrolet, and such motor vehicles are not shipped to Dealer prior to the introduction of new motor vehicle models, thereby canceling such orders, then to the extent such accessories are not usable on the new models and are in excess of Dealer's requirements they may also be returned to Chevrolet for credit. Such parts, accessories and service supplies shall be packaged or crated and shipped to the destination specified by Chevrolet, transportation charges prepaid. Credit on new parts and accessories will be at Dealer's net cost. Dealer shall be entitled to return accessories whether same were purchased separately or shipped on or with a new Chevrolet motor vehicle.

Dealer, however, will not be entitled to return materials which are acquired or fabricated specially by Chevrolet upon Dealer's order for a particular service order or motor vehicle, or unlisted parts or assemblies, or any cut or fabricated upholstery or trim items.

5. Terms and Conditions of Sale—Motor Vehicles, Parts and Accessories

A. Change of Design or Specifications

Chevrolet may change the design or specifications of any Chevrolet motor vehicles, parts or accessories at any time without notice and without obligation to make the same or any similar change upon any Chevrolet motor vehicles, parts or accessories previously purchased by or shipped to Dealer or being manufactured or sold in accordance with Dealer's orders. Such changes shall not be considered Model Changes as contemplated by subsection H of Section 3 hereof.

B. Failure to Fill Orders

Chevrolet shall not be liable for failure or delay in filling

orders of Dealer, which have been accepted by Chevrolet, where such failure or delay is due, in whole or in part, to any labor, material, transportation, or utility shortage or curtailment, or to any labor trouble in the plants of Chevrolet or its suppliers. Chevrolet shall not be liable for failure or delay in filling orders of Dealer, which have been [fol. 1171] accepted by Chevrolet, where such failure or delay is due to any cause beyond the control or without the fault or negligence of Chevrolet. Dealer shall not be liable for any failure to accept shipments of products ordered from Chevrolet, where such failure is due to any labor trouble in Dealer's establishment. Dealer shall not be liable for any failure to accept shipments of products ordered from Chevrolet, where such failure is due to any cause beyond the control or without the fault or negligence of Dealer.

OPERATING REQUIREMENTS

6. Dealer's Place of Business

In order to provide product representation commensurate with the good will attached to the name "Chevrolet" and to facilitate the proper sale and servicing of Chevrolet motor vehicles, parts and accessories, Dealer will maintain a place of business satisfactory as to appearance and location, and adequate in size and layout for new motor vehicle sales operations, service operations, parts and accessories sales and used car and/or truck sales, and will maintain the business hours customary in the trade.

Once Dealer is established in facilities and at a location mutually satisfactory to Dealer and Chevrolet, Dealer will not move to or establish a new or different location, branch sales office, branch service station, or place of business including any used car and/or truck lot or location without the prior written approval of Chevrolet.

For the purpose of identifying the premises for which Chevrolet may have an obligation under Section 22 hereof, Dealer shall submit to Chevrolet, concurrently with the execution of this Agreement, a complete description of the location and the land and buildings to be used by Dealer in the performance of this Agreement. Such descriptions shall be submitted on a "Statement of Dealership Premises" form to be furnished by Chevrolet. In the

event of any approved change in Dealer's location or land and buildings during the term of this Agreement, a new "Statement of Dealership Premises" shall be prepared and signed by Dealer and approved by Chevrolet.

7. Capital Requirements

Since the amount and structure of owned net working capital and net worth required to handle properly the business to be conducted by Dealer hereunder depends upon many factors, including size of market, sales and service facilities required and anticipated volume, and since Chevrolet sets minimum owned net working capital standards for its dealers based on Chevrolet's past experience, Dealer, in accordance with a separate Minimum Capital Standard Agreement, to be executed by Dealer and Chevrolet at the time of execution of this Agreement, shall establish Dealer's owned net working capital at the time and in the amount specified therein and shall maintain such amount as its minimum owned net working capital. If, due to changed conditions, it should become necessary to materially increase or decrease the amount of minimum owned net working capital required to handle Dealer's business properly, Dealer and Chevrolet agree to establish [fol. 1172] a revised amount of minimum owned net working capital to meet such changed conditions. If the amount thereof is increased, Dealer will meet the new minimum owned net working capital requirements within the time agreed upon by Chevrolet and Dealer.

8. Accounts and Records

A. Uniform Accounting System

It is to the mutual interests of Chevrolet and Dealer that uniform accounting systems and practices be maintained by dealers in order that Chevrolet may develop standards of operating performance which will enable dealers to obtain the most satisfactory results from the sales potentials assigned to them, and which will enable Chevrolet to prepare composite dealer profit statements periodically to guide Chevrolet in formulating policies beneficial to the Dealers' interests.

Accordingly, Dealer will use and keep up to date a satis-

factory uniform accounting system of a type designated by Chevrolet and will furnish to Chevrolet by the tenth of each month a complete and accurate financial and operating statement, with supporting data, covering the preceding month's operations and showing the true and actual condition of Dealer's business. Dealer will maintain said system in accordance with the Accounting Manual prescribed by Chevrolet.

B. Records Supporting Claims

It is also to the mutual interests of Chevrolet and Dealer that Chevrolet's policies and procedures relating to applications for reimbursement for warranty and policy work, to parts wholesale compensation claims and to applications for discounts, allowances, refunds or credits under other Chevrolet programs be uniformly applied to all Chevrolet dealers.

Therefore, Dealer will prepare, keep up to date and retain, in accordance with the policies and procedures formulated by Chevrolet, records in support of applications for reimbursement for warranty and policy work performed by Dealer, claims for parts wholesale compensation and applications for discounts, allowances, refunds or credits under other Chevrolet programs in which Dealer participates.

C. Examination of Accounts and Records

In order to assure the maintenance of an accounting system of a type designated by Chevrolet, Dealer will permit an examination of its accounts and records to be made by a person or persons, either in the employ of Chevrolet or acceptable to Chevrolet. A copy of the report of such examination will be furnished to both Chevrolet and Dealer. Dealer will also permit Chevrolet to make an examination and audit of Dealer's records supporting applications for reimbursement for warranty and policy work performed by Dealer, claims for parts wholesale compensation and applications for discounts, allowances, refunds or credits under other Chevrolet programs in which Dealer participates.

9. Sale of Motor Vehicles

Dealer shall provide satisfactory sales performance and render satisfactory service to owners in the area described

in Paragraph First. Evaluation of Dealer's sales performance shall be based on the relationship of Dealer's sales of new Chevrolet motor vehicles in such area to the sales of other makes of motor vehicles directly competitive therewith both in price and in product in such area, as [fol. 1173] compared to a similar relationship of the sales of new Chevrolet motor vehicles to other makes of motor vehicles directly competitive therewith specifically in the Chevrolet Zone area wherein Dealer is located, but not necessarily to the exclusion of the Chevrolet Regional area or the National area. Such evaluation shall be based on records generally accepted for such purposes by the automobile industry and shall also take into account other pertinent factors, such as the trend of Dealer's sales performance over a reasonable period of time, the availability and the delivery of Chevrolet motor vehicles to Dealer, and local conditions directly affecting such sales performance.

Where one or more other Chevrolet dealers are located within the area described in Paragraph First, the evaluation of the combined sales performance of all Chevrolet dealers in such area shall be made as provided above, and Dealer's sales performance shall be measured by Dealer's contribution to the combined sales performance of all Chevrolet dealers in such area. In evaluating Dealer's contribution to such combined sales performance, consideration shall be given to such factors as Dealer's sales performance over a reasonable period of time, the availability and delivery of Chevrolet motor vehicles to Dealer, the geographic location of Dealer's place of business and the general shopping habits of the buying public within such area, Dealer's sales participation experience within such area, and Dealer's standard of sales participation within such area previously determined and accepted by Dealer and Chevrolet.

10. Sales and Mechanical Staff

Dealer shall maintain a staff of salesmen and a selling and customer relations organization adequate to take care of the sales potential, and will employ a sufficient number of competent mechanics to meet adequately the service requirements of the owners of Chevrolet motor vehicles, in Dealer's area of sales and service responsibility.

11. Sales and Service Records

In furtherance of the purposes, objectives, and obligations provided for in this Agreement, Dealer will keep complete and up-to-date records regarding the sale and servicing of new Chevrolet motor vehicles and will permit Chevrolet at all reasonable times in business hours to inspect such records.

12. Owner Complaints

Dealer will receive, investigate and handle all complaints received from owners of Chevrolet motor vehicles with a view to securing and maintaining the good will of the public toward Dealer, Chevrolet and Chevrolet motor vehicles. All complaints received by Dealer which cannot be readily remedied shall be promptly reported in detail to Chevrolet.

13. Treatment of Purchasers

A. Informing Purchasers as to Details of Their Purchases

Dealer will inform retail purchasers of Dealer's delivered prices and will give them itemized invoices covering the details of their purchases.

[fol. 1174] B. Representations as to Contents of Charges

Dealer will not make any misleading statements or misrepresentations as to the items making up the total selling price of a new Chevrolet motor vehicle, or as to the prices related to such items, nor make any statements intended to lead any purchaser to believe that a greater portion of the selling price of a new Chevrolet motor vehicle represents destination charges and factory handling charges than the amounts of such items actually charged to and paid for by Dealer.

C. Right of Retail Purchaser to Buy a New Motor Vehicle Without Purchasing Optional Equipment or Accessories

Dealer recognizes that a retail customer has the right to purchase new Chevrolet motor vehicles without being required to purchase any optional equipment or accessories and Dealer, therefore, will either remove any optional equipment or accessories which the purchaser does not want, or will immediately order a new Chevrolet motor vehicle without such optional equipment or accessories.

D. Advertising

Both Chevrolet and Dealer recognize the need of maintaining the highest standards of ethical advertising at all times in order to secure and maintain public confidence in Dealer, Chevrolet and Chevrolet products.

Accordingly, Chevrolet will not publish, cause to be published, encourage or approve any advertising relating to Chevrolet motor vehicles, parts or accessories which is likely to mislead or deceive the public, and Dealer will not publish, cause to be published or approve any advertising relating to Dealer's sale of Chevrolet motor vehicles, parts or accessories which is likely to mislead or deceive the public.

14. Care of Owner

A. Stock of Parts

Dealer will carry in stock at all times during the term of this Agreement an adequate inventory of parts and accessories to render proper service to owners of Chevrolet motor vehicles in Dealer's area of sales and service responsibility.

B. Representation as to Parts

Dealer will not sell, offer for sale, or use in the repair of Chevrolet motor vehicles as new Chevrolet parts, or any part or parts which are not in fact new Chevrolet parts as defined in Section 1 of this Agreement.

C. Conditioning of New Motor Vehicles

Dealer will condition each new motor vehicle before delivery, in accordance with Chevrolet's pre-delivery inspection schedule.

D. Warranty Adjustments

In fulfillment of its warranty obligations to Dealer under subsection K of Section 3 hereof and, subject to the provisions of "Chevrolet Policies on Dealer Adjustments", for other policy and warranty work performed by Dealer with Chevrolet's approval, Chevrolet will reimburse Dealer therefor as follows:

Parts: If the replaced part or parts are returned to and found by Chevrolet to be defective, Chevrolet will pay or credit to Dealer an amount equal to the then

current dealer net price of such part or parts plus ten per cent (10%). The return of such parts to Chevrolet shall be made in accordance with the provisions of subsection E of Section 4 hereof.

[fol. 1175] Labor: Chevrolet will pay or credit Dealer on the basis of the Chevrolet Flat Rate System of time allotments as recommended and furnished by Chevrolet at one hundred per cent (100%) of the labor rates related thereto as agreed upon with Chevrolet.

E. Chevrolet Policies on Dealer Adjustments

Dealer will comply with "Chevrolet Policies on Dealer Adjustments" established by Chevrolet to foster and retain owner good will toward Chevrolet dealers, Chevrolet and Chevrolet motor vehicles parts and accessories. Such policies are reviewed periodically by Chevrolet to assure the handling of adjustments properly and efficiently to secure the maximum benefits to be derived therefrom. Accordingly, Chevrolet reserves the right at any time to change or modify the provisions of the "Chevrolet Policies on Dealer Adjustments", such changes or modifications to become effective upon notice thereof to Dealer.

F. Customer Relationship

Dealer will furnish to owners of Chevrolet motor vehicles in Dealer's area of sales responsibility prompt, efficient and courteous service and will establish regular contact either by correspondence or personal interview with all persons purchasing Chevrolet motor vehicles from Dealer.

15. Signs

Dealer will purchase, erect, and maintain at Dealer's expense the following signs:

A. Product Sign

A standard product electric sign in a conspicuous place outside Dealer's showrooms, provided the erection thereof is not prohibited by municipal ordinance or statute.

B. Service Sign

A standard authorized service sign in a suitable location on the outside of Dealer's place of business.

C. Other Necessary Signs

Such other signs as are necessary to advertise Dealer's business properly on a basis mutually satisfactory to both Chevrolet and Dealer.

16. Trademarks and Service Marks

A. Exclusive Ownership

General Motors Corporation is the exclusive owner of the various trademarks and service marks, including the word "Chevrolet" and the several other word and design marks, which Chevrolet uses in connection with motor vehicles, parts and accessories, and the servicing thereof.

B. Use by Dealer

Dealer is granted the non-exclusive privilege of displaying such trademarks and service marks in connection with the sale or offering for sale and servicing of Chevrolet motor vehicles, parts and accessories, provided, however, that Dealer shall discontinue the display or use of any such mark or change the manner in which any such mark is displayed or used when requested to do so by Chevrolet. Such marks may be used as part of the name under which Dealer's business is conducted only with the express approval of Chevrolet.

C. Discontinuance of Use Upon Termination

If any such mark is used as part of Dealer's business or corporate name or is used in signs, advertising or in any other manner by Dealer, Dealer will, upon termination of this Agreement, immediately discontinue all such use and [fol. 1176] display thereof. Thereafter, Dealer will not use, either directly or indirectly, any such marks or any other marks so resembling said marks as to be likely to cause confusion or mistake or deceive the public. Failure of Chevrolet and Dealer to complete the purchase and sale of signs under the provisions of Section 21 of this Agreement shall not relieve Dealer of its obligations under the provi-

sions of this subsection C to discontinue the use of such marks on such signs.

D. Dealer's Liability for Failure to Discontinue Use

If Dealer shall refuse or neglect to keep and perform the provisions of subsections B or C above, Dealer shall reimburse Chevrolet for all costs, attorneys' fees and other expenses incurred by Chevrolet in connection with legal action to require Dealer to comply therewith.

17. Advertising and Promotional Program

In order that Chevrolet dealers may be assured the benefits of comprehensive advertising of Chevrolet products, Chevrolet agrees to establish, pay for, and maintain a Chevrolet advertising and Promotional Program to promote the sale of Chevrolet products for the mutual benefit of Chevrolet and Chevrolet dealers and to administer such program on a national and local basis.

Chevrolet undertakes to make provision for such Advertising and Promotional Program in an aggregate amount on the basis of the average amount per motor vehicle set forth in the Chevrolet Dealer Price List under the heading "Advertising and Promotional Program" for all new Chevrolet motor vehicles sold and delivered by Chevrolet to Chevrolet dealers.

During the term of this Agreement the provisions of the Advertising and Promotional Program may be modified from time to time to limit or to broaden the application and coverage of such program. Moreover, the average amount per Chevrolet motor vehicle may be increased or decreased from time to time with the announcement of new yearly model vehicles to compensate for increases or decreases in advertising and other costs and for modifications in the program.

TERMINATION OF AGREEMENT

18. Termination

A. Termination by Dealer

Dealer may terminate this Agreement by written notice of termination delivered to Chevrolet, such termination to be

effective one (1) month after receipt by Chevrolet of such notice.

B. Termination for Cause

(1) If Chevrolet or Dealer requires a license for the performance of any obligation under or in connection with this Agreement in any state or jurisdiction where this Agreement is to be performed, then and in such event if either of the parties shall fail to secure or maintain a license or renewal thereof or if such license shall be suspended or revoked, irrespective of the cause or reason therefor, either party may immediately terminate this Agreement by giving to the other party written notice of such termination.

(2) If Dealer does not conduct its business in accordance with any requirement set forth in Sections 6 through 12, [fol. 1177] inclusive, or Section 14 of this Agreement, Chevrolet may terminate this Agreement by giving to Dealer written notice of termination to be effective three (3) months after receipt of such notice.

(3) In the event of the death or incapacity (for reasons of health) of any person named in Paragraph Third hereof, Chevrolet may terminate this Agreement. However, to facilitate an orderly termination of the business relationships between Chevrolet and Dealer and to facilitate any liquidation of the dealership business contemplated by Dealer, Chevrolet will defer the exercise of such right to terminate for a period, to be determined by Chevrolet, of not less than ninety (90) days and not more than one (1) year from the date of such death or incapacity, and will continue to operate with Dealer under the terms of this Agreement during such period and this Agreement will terminate at the expiration of such period, if Chevrolet, within thirty (30) days from the date of such death or incapacity, receives a written request for such deferment from the executor(s), administrator(s) or representative(s) of such deceased or incapacitated person if he is the Dealer, or from the Dealer if Dealer is a proprietorship and such deceased or incapacitated person is not the Dealer, or from the remaining partner(s) in Dealer if Dealer is a co-partnership, or from the principal executive officer of Dealer if Dealer is a corporation. If such written request is not so

received by Chevrolet within such thirty (30) day period, Chevrolet may then terminate this Agreement.

(4) Chevrolet may terminate this Agreement immediately by delivering to Dealer or its representative written notice of such termination in the event of the happening of any of the following:

(a) Removal, resignation, withdrawal or elimination from Dealer for any reason of any person named in Paragraph Third of this Agreement.

(b) Any attempted transfer or assignment of this Agreement or any right or obligation hereunder.

(c) Any misrepresentation to Chevrolet by Dealer or by any person named in Paragraph Third hereof in applying for this Selling Agreement or any misrepresentation to Chevrolet by Dealer or by any person named in Paragraph Third hereof as to the direct and/or indirect ownership or management of Dealer; or any sale, transfer, relinquishment, voluntary or involuntary, by operation of law or otherwise, of any interest in the direct or indirect ownership or active management of Dealer without the prior written approval of Chevrolet.

(d) Any dispute, disagreement, or controversy between or among principals, partners, managers, officers or stockholders of Dealer which may adversely affect the ownership, operation, management, business or interest of Dealer or Chevrolet.

(e) Insolvency of Dealer; filing of a voluntary petition in bankruptcy by Dealer; filing of a petition to have dealer declared bankrupt, provided that it is not vacated within thirty (30) days from date of filing; appointment of a receiver or trustee for Dealer, provided such appointment is not vacated within thirty (30) days from the date of such appointment; execution by dealer of an assignment for the benefit of creditors.

(f) Conviction of Dealer or any principal officer, principal stockholder or manager of Dealer or any partner in Dealer of any crime, which, in the opinion of Chevrolet, may adversely affect the good will or interests of Dealer or Chevrolet.

(g) Failure of Dealer to maintain dealership operation as a going business, open during customary business hours, for seven consecutive business days, provided such failure is not due to causes beyond Dealer's control and is without Dealer's fault or negligence.

(h) Any submission by Dealer to Chevrolet of a false or fraudulent application, or claims or statements in support thereof, for reimbursement for warranty and policy work performed by Dealer, for parts wholesale compensation or for any other discount, allowance, refund or credit under any other Chevrolet program.

19. Transactions After Termination

A. Effect of Termination on Orders

In the event that a new Selling Agreement is not entered into by the parties upon expiration of this Agreement or in the event that this Agreement is terminated in accordance with any provision of Section 18, all orders of Dealer for motor vehicles, parts and accessories then outstanding shall be automatically cancelled. Termination of this Agreement shall not release Dealer, however, from the obligation to pay any sum which may then be owing Chevrolet or from the obligation to pay for any motor vehicle or equipment for same which is special, as defined in subsection C of Section 3 of this Agreement, and which may have been ordered by Dealer and not shipped prior to any termination of this Agreement.

B. Termination Deliveries

In the event of termination of this Agreement under the provisions of subsection A of Section 18, or subsection B(3) of Section 18 without any deferment of termination as provided for therein, but not otherwise, Chevrolet will use its best efforts to furnish Dealer with Chevrolet motor vehicles to fill Dealer's bona fide retail orders on hand on the date of termination not to exceed, however, the total number of motor vehicles delivered to Dealer by Chevrolet during the three (3) months immediately preceding the effective date of termination, subject, to the following conditions and limitations:

- (1) Within ten (10) days following the date of ter-

mination, Dealer shall deliver to Chevrolet a written schedule of Dealer's bona fide retail orders on hand on the date of termination. Such schedule shall show the name and address of each retail customer and the details with respect to each motor vehicle ordered, including model, body type, color and accessories and shall specify each bona fide order against which Dealer desires Chevrolet to make delivery up to the total number of motor vehicles required to be delivered by Chevrolet as above described. Those orders for which delivery is thus specified by Dealer, when approved by Chevrolet, shall constitute Dealer's Schedule of Termination Deliveries. No changes or substitution may be made by Dealer in such Schedule of Termination Deliveries and Chevrolet will not be obligated to make delivery of any motor vehicle to Dealer except as specified therein. In the event of Dealer's failure to deliver to Chevrolet the detailed Schedule above required, Dealer shall have no further rights.

[fol. 1179] (2) Dealer shall accept any motor vehicle required to be delivered by Chevrolet hereunder against Dealer's Schedule of Termination Deliveries immediately upon notification by Chevrolet of the availability to Dealer of such motor vehicle and in accordance with the terms and conditions of sale established by Chevrolet and in effect at the time of shipment. In the event of its failure to do so, Dealer shall have no further right to receive such motor vehicle or any other motor vehicle in lieu of it.

(3) Motor vehicles shall be delivered by Chevrolet hereunder in substantial accordance with the schedules and basis of delivery in effect with respect to other dealers in the same zone at the time of Dealer's termination.

(4) Dealer shall give Chevrolet notice immediately of cancellation for any reason of any retail order set forth in Dealer's Schedule of Termination Deliveries.

(5) In the event of the cancellation for any reason of any retail order set forth in Dealer's Schedule of Termination Deliveries before delivery by Chevrolet of a motor vehicle to apply against such order, Chev-

rolet shall be released from any obligation to make delivery of such motor vehicle.

(6) Dealer shall provide proper and adequate facilities in accordance with the terms and provisions of this Agreement to effect the delivery and handling of motor vehicles to be supplied upon termination under this subsection B.

C. Effect of Transactions After Termination

The acceptance of orders from Dealer or the continuance of sale of motor vehicles, parts, accessories or any other products to Dealer or any other act of Chevrolet after termination of this Agreement shall not be construed as a renewal of this Agreement for any further term nor as a waiver of the termination.

20. Survivor's Rights

A. Rights of Surviving Persons Named in Paragraph Third

In the event this Agreement is terminated by Chevrolet under the provisions of subsection B(3) or subsection B(4) (a) of Section 18 hereof, and, at the time of such termination, another person is named in Paragraph Third of this Agreement, Chevrolet shall offer a new Chevrolet Dealer Selling Agreement, in which such other person will be named in Paragraph Third thereof, to a successor dealership designated by such other person for the unexpired balance of the term of this Agreement, provided that such successor dealership is ready, willing and able to comply with the operating requirements of the then current Chevrolet Dealer Selling Agreement for a Chevrolet dealership at the dealership location and the other financial participants in such successor dealership are approved by Chevrolet, and provided, further, that such other person:

(1) is named in Paragraph Third of this Agreement on the basis of participating in the operation hereof as distinguished from participating solely in the ownership hereof;

(2) has not waived his rights under this subsection A in an Interim Agreement Addendum to this Agreement;

[fol. 1180] (3) will actively and, in fact, participate in the operation of the successor dealership; and

(4) will own or acquire within a reasonable time (considering then existing circumstances) after the date of termination of this Agreement a financial interest of at least twenty-five percent (25%) in the successor dealership.

If more than one other person is named in Paragraph Third of this Agreement at the time of such termination who can qualify under the conditions set forth above, such persons must agree in writing and notify Chevrolet within thirty (30) days after the termination of this Agreement, as to which of them will designate the successor dealership and be named in Paragraph Third of the new Chevrolet Dealer Selling Agreement. If Chevrolet does not receive such notice within such thirty (30) day period, Chevrolet shall not be obligated to offer a new Selling Agreement to a successor dealership designated by any of such persons.

B. Widow's Financial Participation and Interim Agreement Addenda

In view of Chevrolet's reserved right herein to terminate this Agreement under subsection B(3) of Section 18 hereof in the event of the death or incapacity (for reasons of health) of any person named in Paragraph Third hereof, Chevrolet has made available to Dealer, for consideration in conjunction with the provisions of subsection A of this Section 20 a Widow's Financial Participation Addendum form and an Interim Agreement Addendum form.

The Widow's Financial Participation Addendum provides that in the event that Chevrolet should terminate this Agreement under the provisions of subsection B(3) of Section 18 hereof and a surviving person or persons named in Paragraph Third hereof should qualify as a person or persons to be named in Paragraph Third of a new Chevrolet Dealer Selling Agreement to be offered to a successor dealership under the provisions of subsection A of this Section 20, Chevrolet will, with the approval of such surviving person or persons, consent to the acquisition or retention by the widow or wife, of the person named in Paragraph Third upon whose death or incapacity, as the

case may be, the termination is predicated, of a financial interest in the successor dealership, subject, however, to a right in the surviving person or persons to buy out the widow's or wife's, as the case may be, interest within the period of time agreed to by the parties therein.

The Interim Agreement Addendum provides that, in the event Chevrolet should terminate this Agreement under the provisions of subsection B(3) of Section 18 hereof, and if all other persons named in Paragraph Third of this Agreement, if any, shall have waived their rights to participate in the operations and ownership of a successor dealership under the provisions of subsection A of this Section 20, Chevrolet will offer to a nominee named in the Interim Agreement Addendum a Chevrolet Interim Dealer Selling Agreement for a term comprising the next succeeding twenty-four (24) months following the effective date of such termination, if such nominee, at the time of such termination, meets the qualifications set forth in the Interim Agreement Addendum. The Interim Agreement Addendum also permits the Dealer, or any person named [fol. 1180] in Paragraph Third with the approval of Dealer and any other person named in Paragraph Third, to make an election as to whether or not the widow or wife, of the person named in Paragraph Third upon whose death or incapacity, as the case may be, the termination is predicated, shall have a right to acquire or retain a financial interest in the successor dealership.

Any request for the execution of a Widow's Financial Participation Addendum or an Interim Agreement Addendum to this Agreement shall be made by Dealer in writing to Chevrolet and shall indicate that all persons named in Paragraph Third have approved the request. Such request in connection with an Interim Agreement Addendum shall name the person to be designated as nominee therein and outline his qualifications as an operator of a Chevrolet dealership.

21. Chevrolet's Right to Purchase When Agreement is Terminated

In the event of termination of this Agreement or in the event Chevrolet does not offer Dealer a new Selling Agreement upon the expiration of the term of this

Agreement, and upon compliance with the provisions hereinafter set forth, Chevrolet will purchase from Dealer and Dealer will sell to Chevrolet:

(1) All new and unused Chevrolet motor vehicles of the current model on hand in Dealer's place of business or in Dealer's possession at Dealer's net cost, including destination charges paid to Chevrolet thereon.

Motor Vehicles (2) All unused and undamaged Chevrolet parts listed in Chevrolet's current Dealer Parts and Accessories Price Schedule and purchased directly from Chevrolet, or purchased from an outgoing Chevrolet dealer as a part of Dealer's initial Chevrolet parts inventory, and on hand in Dealer's place of business or in Dealer's possession, at the dealer net prices therefor in effect at the time such parts are received by Chevrolet, less applicable stock order allowances thereon, if any, whether or not any such stock order allowances were made to Dealer when the parts were purchased by Dealer, plus five percent (5%) of such purchase price for packing costs and plus reimbursement for transportation charges to destination specified by Chevrolet.

Parts

(3) All unused and undamaged Chevrolet accessories and service supplies purchased directly from Chevrolet during the twelve(12) month period immediately preceding the effective date of such termination and on hand in Dealer's place of business or in Dealer's possession at the dealer net prices therefor in effect at the time such accessories and service supplies are received by Chevrolet, plus five per cent (5%) thereof for packing costs and plus reimbursement for transportation charges to destination specified by Chevrolet.

Accessories

(4) All new and unused commercial bodies and cabs of current models purchased directly from Chevrolet on hand in Dealer's place of business or in Dealer's possession at Dealer's net prices according to current Price Lists then in

Comm. Bodies bodies or cabs have been mounted on chassis by Dealer, the price to be paid therefor shall be the net price to Dealer for the complete unit according force plus transportation charges paid to Chevrolet thereon. In the event that any such commercial to current list prices, even though Dealer purchased same separately at a higher price.

Signs (5) Any signs belonging to Dealer of a type recommended in writing by Chevrolet and bearing the word "Chevrolet", at a price mutually agreed upon by Chevrolet and Dealer. If Chevrolet and Dealer cannot agree on a price, they shall select a third party who shall set the price.

Tools (6) Any special tools, which Dealer may elect to sell to Chevrolet, of a type recommended by Chevrolet and designed specifically for service of Chevrolet motor vehicles which were purchased by Dealer during the three (3) year period immediately preceding termination, while Dealer shall have been operating under a Chevrolet Selling Agreement, at a price mutually agreed upon by Chevrolet and Dealer. If Chevrolet and Dealer cannot agree on a price, they shall select a third party who shall set the price.

Immediately following the effective date of termination, Dealer shall furnish Chevrolet with a list of vehicle identification numbers of, and such other information as Chevrolet may require pertaining to, the motor vehicles to be purchased from Dealer under this Section 21. Dealer will deliver all such motor vehicles to Chevrolet in accordance with Chevrolet's instructions.

Within not more than thirty (30) days following the date of termination, Dealer shall mail or deliver to Chevrolet (i) lists of parts, accessories and service supplies, on forms furnished by Chevrolet and (ii) a list of special tools and signs to be purchased by Chevrolet under this Section 21. Dealer shall retain possession of all such items until receipt from Chevrolet of shipping instructions. Within ninety (90) days thereafter Dealer shall make delivery of such items, transportation charges prepaid, to such destination(s) as Chevrolet may direct.

Dealer shall take such action and shall execute and deliver such instruments as may be necessary (a) to convey good marketable title to all such property to Chevrolet, (b) to comply with the requirements of any applicable state law relating to bulk sales or transfers and (c) to satisfy and discharge any liens or encumbrances on said property prior to delivery thereof to Chevrolet.

Chevrolet shall pay Dealer for the property purchased by it under the provisions of this Section 21 as soon as practicable following delivery of such items to Chevrolet, provided, however, that any payment for such property may be made by Chevrolet, at its option, directly to any financing institution or other person or concern which shall have a security or ownership interest therein.

Chevrolet may deduct from the purchase price of any property purchased by it under the provisions of this Section 21 any indebtedness of Dealer to Chevrolet.

22. Loss on Premises

A. Premises Owned by Dealer

(1) Terminations to Which Applicable

The provisions of this subsection A shall be applicable [fol. 1183] only (a) in the event Chevrolet does not offer Dealer a new Selling Agreement upon the expiration of the term of this Agreement or (b) in the event Chevrolet terminates this Agreement (i) under the provisions of subsection B(1) of Section 18 hereof because of Chevrolet's failure to secure or maintain any required license or renewal thereof, (ii) under the provisions of subsection B(2) of Section 18 hereof or (iii) because of the incapacity for reasons of health of any person named in Paragraph Third of this Agreement.

(2) Premises to Which Applicable

The provisions of this subsection A shall be applicable only to premises which, at the time Dealer first has knowledge that a termination on one of the bases specified in paragraph (1) of this subsection A would become effective, (a) are owned by Dealer and carried on Dealer's books and records as land and building assets, (b) are not used or occupied in whole or in part for any business purpose other

than (i) the performance of Dealer's obligations under this Agreement or (ii) the performance of Dealer's obligations under this Agreement and one or more other dealer or distributor Agreements with Pontiac, Oldsmobile, Buick, Cadillac or GMC Truck & Coach Divisions of General Motors Corporation, and such other dealer or distributor Agreements are terminated simultaneously with the termination of this Agreement, and (c) are described in the "Statement of Dealership Premises" on file with Chevrolet. Such premises are hereinafter referred to in this subsection A as "Dealer's Premises".

(3) Chevrolet's Obligations

To the end that the equities of Dealer will be protected and Dealer will not suffer a loss on Dealer's premises in relation to the fair market value thereof as of the time of termination, Chevrolet will assist Dealer in the orderly disposition of Dealer's premises in accordance with and subject to the following provisions and conditions:

(a) Dealer shall, within thirty (30) days from the effective date of termination of this Agreement, file with Chevrolet a written application for assistance in the disposition of Dealer's premises in accordance with the provisions of this subsection A. Such written application shall contain a representation to Chevrolet by Dealer and the person or persons named in Paragraph Third of this Agreement that it is the intention of Dealer and each such person to retire from the business of selling either new or used motor vehicles in the general selling area wherein Dealer operated under this Selling Agreement. Chevrolet shall be released from any and all obligations to Dealer under this subsection A if Dealer fails to file such written application within such thirty (30) day period.

(b) Following receipt of the written application required under subparagraph (a) above, Chevrolet will endeavor to (i) locate a purchaser who will offer to purchase Dealer's premises at a fair and reasonable price, or (ii) locate a lessee who will offer to lease Dealer's premises for a reasonable term at a fair and reasonable rental. If Chevrolet does not locate such a purchaser or lessee within a reasonable time, Chev-

rolet will offer either to purchase Dealer's premises at a fair and reasonable price or will offer to lease Dealer's premises for a reasonable term at a fair and reasonable rental.

[fol. 1184] (c) In establishing a fair and reasonable purchase price for Dealer's premises for the purpose of sale thereof to Chevrolet or a reasonable rental for the purpose of lease thereof to Chevrolet, Chevrolet and Dealer will give consideration (i) to the adequacy of Dealer's premises for a Chevrolet dealership operation and the length of time Dealer's premises have been used by Dealer in the performance of this Agreement or any other dealer or distributor Selling Agreement and (ii) to the fair appraised market value of Dealer's premises or the fair and reasonable monthly rental rate for Dealer's premises, as the case may be, as determined by the average of the appraisals of three qualified real estate appraisers, of whom Dealer and Chevrolet shall each select one and the two thus selected shall in turn select the third. Based on these considerations, Dealer and Chevrolet shall agree upon a fair and reasonable purchase price and a fair and reasonable rental for Dealer's premises.

(d) Upon receipt of a bona fide offer from a prospective purchaser to purchase Dealer's premises at a fair and reasonable price Dealer will sell Dealer's premises to such prospective purchaser, or upon receipt of a bona fide offer from a prospective lessee to lease Dealer's premises at a fair and reasonable rental for a reasonable term Dealer will lease Dealer's premises to such prospective lessee. The failure of Dealer to accept such a bona fide offer from a prospective purchaser or from a prospective lessee shall constitute a complete release of Chevrolet from any obligation to purchase or lease Dealer's premises and from any other obligation under this subsection A.

(e) If Dealer's premises are also used by Dealer in the performance of Dealer's obligations under one or more dealer or distributor Agreements with Pontiac, Oldsmobile, Buick, Cadillac and GMC Truck & Coach Di-

visions of General Motors Corporation, which are terminated simultaneously with the termination of this Agreement, such other Division or Divisions of General Motors Corporation will arrange with Chevrolet as to which Division will assist Dealer in the disposition of Dealer's premises under this subsection A and Dealer will be so notified in writing.

B. Premises Leased by Dealer

(1) Terminations to Which Applicable

The provisions of this subsection B shall be applicable only (a) in the event Chevrolet does not offer Dealer a new Selling Agreement upon the expiration of the term of this Agreement or (b) in the event Chevrolet terminates this Agreement (i) under the provisions of subsection B(1) of Section 18 hereof because of Chevrolet's failure to secure or maintain any required license or renewal thereof or (ii) under the provisions of subsections B(2) or B(3) of Section 18 hereof.

(2) Premises to Which Applicable

The provisions of this subsection B shall be applicable only to the premises which, at the time Dealer first has knowledge that a termination on one of the bases specified in paragraph (1) of this subsection B would become effective, (a) are leased by Dealer under a written lease for a term continuing beyond the effective date of such termination, (b) are not used or occupied in whole or in part for any business purpose other than (i) the performance of Dealer's obligations [fol. 1185] under this Agreement or (ii) the performance of Dealer's obligations under this Agreement and one or more other dealer or distributor Agreements with Pontiac, Oldsmobile, Buick, Cadillac or GMC Truck & Coach Divisions of General Motors Corporation, and such other dealer or distributor Agreements are terminated simultaneously with the termination of this Agreement, and (c) are described in the "Statement of Dealership Premises" on file with Chevrolet. Such premises are hereinafter referred to in this subsection B as the "leased premises" and, if the leased premises are covered by more than one lease, the words "lease" and "lessor", as used in this subsection B, shall be deemed to include the plural thereof.

(3) Chevrolet's Obligations

To the end that the equities of Dealer will be protected and the normal losses incident to the liquidation of Dealer's business will be minimized, Chevrolet will assist Dealer in the liquidation of Dealer's obligations under any existing lease of the leased premises in accordance with and subject to the following provisions and conditions:

(a) Dealer shall, within thirty (30) days from the effective date of termination of this Agreement, file with Chevrolet a written application for assistance in the liquidation of Dealer's obligations under any lease of the leased premises in accordance with the provisions of this subsection B. Such written application shall contain a written representation to Chevrolet by Dealer and the person or persons named in Paragraph Third of this Agreement that it is the intention of Dealer and each such person to retire from the business of selling either new or used motor vehicles in the general selling area wherein Dealer operated under this Agreement. Chevrolet shall be released from any and all obligations to Dealer under this subsection B if Dealer fails to file such written application within such thirty (30) day period.

(b) Following receipt of the written application required under subparagraph (a) above, Chevrolet will endeavor to (i) locate a tenant or tenants, satisfactory to the lessor of the leased premises, who will offer to sublet the premises for the balance of the term of the lease or who will take an assignment or assignments and assume the obligations of such lease, or (ii) effect arrangements satisfactory to Chevrolet and the lessor of the leased premises whereby the lease with Dealer will be canceled, or (iii) sublet the premises from Dealer if the unexpired term of the lease shall not be in excess of twelve (12) months from the effective date of termination of this Agreement. In the event Chevrolet does not locate a sublessee or assignee or arrange for the cancellation of Dealer's lease or sublet the premises, as provided above, Chevrolet will pay Dealer as reimbursement to Dealer, at Chevrolet's option, either (1) a fair monthly rental as of the date of

termination, as determined by the average of the appraisals of three qualified real estate appraisers, of whom Dealer and Chevrolet shall each select one and the two thus selected shall in turn select the third, or (2) the rental specified in the lease. Such payments shall cover reimbursement for rental for a maximum period of twelve (12) months immediately following the effective date of termination or the balance of the term of the lease, whichever shall be lesser. If Dealer's [fol. 1186] obligations under the existing lease are not otherwise liquidated and Dealer is entitled to reimbursement from Chevrolet under the provisions hereof with respect to rentals paid by Dealer, Dealer must file its claim, supported by evidence satisfactory to Chevrolet, for such reimbursement within two (2) months after the expiration of the period covered by such claim.

(c) If the leased premises or any part thereof are occupied by Dealer or by anyone else for business or any other purpose after a period of one (1) month immediately following the effective date of termination, Chevrolet will be discharged from its obligation hereunder to reimburse Dealer for rental paid by Dealer as aforesaid with respect to any month during any part of which the premises or any part thereof are so occupied; provided, however, that where the dealership premises consist of more than one parcel of property or more than one building, each of which is separately usable, distinct and apart from the whole premises or any other part thereof, with appropriate ingress or egress, each such parcel or building may be considered separately for the purposes of this paragraph 3(c) of this subsection B.

(d) If requested to do so by Chevrolet, Dealer shall use its best efforts to effect a settlement of any lease covering the leased premises with the lessor named therein to the same extent as if Chevrolet were not obligated to assist Dealer in the liquidation of Dealer's obligations under such lease, but any such settlement shall be approved by Chevrolet before being finally accepted by Dealer. Any reduction in rental resulting

from any such settlement shall proportionately reduce Chevrolet's obligations under this subsection B.

(e) If the leased premises are also used by Dealer in the performance of Dealer's obligations under one or more dealer or distributor Agreements with Pontiac, Oldsmobile, Buick, Cadillac or GMC Truck & Coach Divisions of General Motors Corporation, which are terminated simultaneously with the termination of this Agreement, such other Division or Divisions of General Motors Corporation will arrange with Chevrolet as to which Division will assume the obligations to Dealer under this subsection B and Dealer will be so notified in writing.

(f) Upon receipt of a bona fide offer from a prospective tenant or tenants satisfactory to the lessor of the leased premises, Dealer will sublet the leased premises or assign the lease thereon to such prospective tenant or tenants. In the event Chevrolet arranges a cancellation of such lease without cost to Dealer, Dealer will execute a cancellation agreement with the lessor of the leased premises. The failure of Dealer to sublet the leased premises, to assign the lease, to execute a cancellation agreement with the lessor of the leased premises or to use its best efforts, if requested, to effect a settlement, all as provided in this subsection B, shall constitute a complete release of Chevrolet from any further obligations under this subsection B.

(g) Dealer shall permit Chevrolet to examine and audit Dealer's books and records insofar as may be necessary to verify claims filed by Dealer under this subsection B.

[fol. 1187] (h) If Dealer is a proprietorship, the term "Dealer" as used in this subsection B shall be interpreted to include Dealer's executor(s), administrator(s) or representative(s) in the event this Selling Agreement is terminated in accordance with the provisions of subsection B(3) of Section 18 hereof.

C. Negotiations

The provisions of subsections A and B of this Section 22 dealing as they do with situations as they will arise in the future must of necessity be stated in broad terms, and to accomplish the fair and equitable results intended all negotiations and transactions contemplated by such subsections will be carried on in the utmost of good faith on the respective parts of both Dealer and Chevrolet.

D. Termination Due to Death of Dealer

If this Agreement is terminated due to the death of Dealer or any person named in Paragraph Third hereof, Chevrolet, if requested to do so, and without assuming any legal obligations or liability with respect thereto, will render assistance to the representatives of the estate of Dealer if the deceased person is Dealer, or to Dealer if the deceased person is not Dealer, in locating a purchaser or lessee for any premises owned by Dealer and used in the performance of Dealer's obligations under this Agreement at the time of said termination.

GENERAL PROVISIONS

23. Dealer Not Made Agent or Legal Representative of Chevrolet

This Agreement, of which these Terms and Conditions are a part, does not constitute Dealer the agent or legal representative of Chevrolet for any purpose whatsoever. Dealer is not granted any express or implied right or authority to assume or to create any obligation or responsibility in behalf of or in the name of Chevrolet or to bind Chevrolet in any manner or thing whatsoever.

24. Responsibility for Dealer's Commitments

Except insofar as it is specifically provided otherwise in this Agreement, Dealer shall be solely responsible for any and all obligations or responsibilities incurred or assumed by Dealer in the performance of this Agreement.

25. Local Taxes

Dealer hereby certifies that all motor vehicles, parts, accessories and items similar thereto purchased from Chevrolet are for resale in the course of Dealer's business. Dealer further certifies that Dealer has obtained any license required to collect sales or use taxes incurred in any such resale transactions, and that the number, if any, of such license has been or will be furnished to Chevrolet. Dealer agrees, as to any such motor vehicles, parts, accessories or items similar thereto which are withdrawn from stock and put to a taxable use in lieu of or prior to resale, and as to any tangible property which Dealer purchases for use and not for resale, to pay directly to the appropriate taxing authority any sales, use or similar taxes incurred by such use or purchase, to file any tax returns required in [fol. 1188] connection therewith, and to hold Chevrolet harmless from any claims or demands made by such taxing authority with respect thereto.

26. Notices

Any notice required to be given by either party to the other under or in connection with this Agreement shall be in writing and delivered personally or by mail. Notices to Dealer shall be directed to Dealer, or its representative at Dealer's place of business; notices to Chevrolet shall be directed to the Zone Manager of the area in which Dealer is located.

27. No Implied Waivers

The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other such provision nor constitute a waiver of the provision itself.

28. Applicable Law

This Agreement is to be governed by and construed according to the laws of the State of Michigan. If, however, any

provision in anywise contravenes the laws of any state or jurisdiction where this Agreement is to be performed, such provision shall be deemed not to be a part of this Agreement therein.

29. Assignment

Dealer shall not transfer or assign nor attempt to transfer or assign this Agreement or any right or obligation hereunder without the prior written consent of Chevrolet executed by the General Sales Manager or an Assistant General Sales Manager of Chevrolet.

30. Sole Agreement of Parties

There are no other agreements or understandings, either oral or in writing, between the parties affecting this Agreement or relating to the sale or servicing of Chevrolet motor vehicles, parts or accessories, except as otherwise specifically provided herein.

This Agreement cancels and supersedes all previous agreements between the parties.

No change in, addition to (except the filling in of blank lines) or erasure of any printed portion of this Agreement shall be valid or binding upon Chevrolet unless the same is approved in writing by the General Sales Manager of Chevrolet.

No agreement between the parties which is at variance with any of the provisions of this Agreement or which imposes definite obligations upon either party not specifically imposed by this Agreement or which is intended to be effective or performed following the expiration or other termination of this Agreement and imposes obligations or extends the time for performance thereof other than as provided in this Agreement shall be binding upon either party unless it bears the signature of the General Sales Manager of the Chevrolet Motor Division—General Motors Corporation and is executed or accepted by Dealer, or unless it bears the facsimile signature of the General Sales Manager, and, except for Dealer Price Lists, is countersigned by an Assistant General Sales Manager, a Regional Manager, an Assistant Regional Manager or a Zone Manager of the Chevrolet Motor Division—General Motors Corporation and is executed or accepted by Dealer.

[fol. 1189] EXHIBIT 4.1 TO STIPULATION OF FACTS
NUMBER ONE

Definition of Los Angeles Metropolitan Area
From January 1, 1960 Through March 31, 1961

"In Los Angeles County, that portion of Los Angeles County bounded by the western and northern city limits of Los Angeles from the Pacific Ocean north, and east to the foothills of the San Gabriel Mountains at Highway Highlands; continuing east along these foothills to the San Gabriel River; and south along the San Gabriel River to Beverly Boulevard; east on Beverly Boulevard, to the city limits of Whittier, following these limits to Catalina Avenue; south on Catalina Avenue to Whittier Boulevard; southeast on Whittier Boulevard, to Scott Avenue and south on Scott Avenue and an imaginary line continuing from the end of Scott Avenue to Imperial Highway; west on Imperial Highway to Ocaso Avenue, south on Ocaso Avenue to the Los Angeles County Line; southwest along the Los Angeles County Line to the Pacific Ocean."

"Including non post office areas served by the post office stations located in the above named communities."

[fol. 1190] EXHIBIT 4.2 TO STIPULATION OF FACTS
NUMBER ONE

Definition of Los Angeles Metropolitan Area
From April 1, 1961 Through October 12, 1961

"In the State of California

In Los Angeles, San Bernardino and Orange Counties, that area bounded by the western and northern city limits of Los Angeles from the Pacific Ocean north and east to the northern city limits of Glendale and the Angeles National Forest Boundary. Continuing east along the Angeles and San Bernardino National Forest Boundaries including the northern city limits of Pasadena, Monrovia, Bradbury, Duarte and Azusa to the Cucamonga Creek; thence south along the Cucamonga Creek to 19th Street at the city limits of Upland, East on 19th Street to Haven Avenue; south on Haven Avenue to the Southern Pacific Railroad tracks, thence west on the railroad tracks to Archibald Avenue, south on Archibald Avenue including the city limits of Ontario to the San Bernardino County line. Thence southwest on the San Bernardino County line to the Orange County line and then southeast on the Orange County line to Santa Ana Canyon Road (Riverside Freeway); southwest on Santa Ana Canyon Road to the city limits of Anaheim. Around the city limits of Anaheim and the city limits of Orange to Santiago Blvd. Thence south and east on Santiago Blvd. to Chapman Ave., east on Chapman Ave. to Newport Ave., south on Newport Ave. to Newport Blvd. Continued southwest on Newport Blvd. including the city limits of Tustin to MacArthur Blvd., south on MacArthur Blvd. to the city limits of Newport Beach; thence southeast along the city limits of Newport Beach to the Pacific Ocean; including non-post office areas located within or without the area described above served by post office stations located within the area described above.

[fol. 1191] In addition, the following communities in Los Angeles County:

Agoura
Calabasas
Malibu

Mt. Wilson
Olive View

Including non-post office areas served by post office stations located in the above named communities.

In San Bernardino County, the community of Mt. Baldy; including non-post office areas served by post office stations located in the community of Mt. Baldy.

In addition, the following communities in Orange County:

El Toro
Irvine

Silverado
Trabuco Canyon

Including non-post office areas served by post office stations located in the above named communities."

[fol. 1192] EXHIBIT NUMBER 5.1 TO STIPULATION OF FACTS
NUMBER ONE

Definition of San Diego Metropolitan Area
From January 1, 1960 Through October 31, 1960

"In the State of California, in the County of San Diego, the City of San Diego, including La Jolla, Pacific Beach, Mission Beach, Torrey Pines, Ocean Beach, Point Loma, all U.S. Military and Naval reservations; also, La Mesa City, National City, Coronado City, Chula Vista City, El Cajon City, and the unincorporated communities of Lemon Grove, Mt. Helix and Linda Vista."

[fol. 1193] EXHIBIT 5.2 TO STIPULATION OF FACTS
NUMBER ONE

Definition of San Diego Metropolitan Area From
November 1, 1960 Through October 12, 1961

"In the State of California

In San Diego County, that portion of San Diego County within the following boundary lines:—Beginning at the junction of the Pacific Ocean and the northern corporate limits of Del Mar east to the city limits of San Diego, thence east along the San Diego City limits to its intersection with the northern boundary of Township 15 South, east along the Township 15 South line to its intersection with the eastern boundary of Range 1 West. South along Range 1 West line around the city limits of El Cajon to State Highway #94, southwest on State Highway #94 to Jamacha Blvd., southwest on Jamacha Blvd. to Sweetwater Reservoir. Southwest along the northern bank of the Sweetwater Reservoir to the Sweetwater River, southwest along the Sweetwater River to the Bonita Mesa Road bridge, thence across the Sweetwater River to Bonita Road. West on Bonita Road to the city limits of Chula Vista, south along the Chula Vista city limits to Mace Street, south on Mace Street to the San Diego City limits. East and south along the city limits of San Diego to the Mexican border, west along the Mexican border to the Pacific Ocean; including non-post office areas located within or without the area described above served by post office stations located within the area described above.

In addition, the following communities in San Diego County:

Alpine	Jamul
Bonita	Lakeside
Boulevard	Mt. Laguna
Campo	Pine Valley
Descanso	Potrero
Dulzura	Tecate
[fol. 1194] Guatay	Tierra del Sol (Hi-
Jacumba	pass)

Including non-post office areas served by post office stations located in the above named communities."

[fol. 1195] EXHIBIT 6 TO STIPULATION OF FACTS
NUMBER ONE

Definition of San Bernardino Metropolitan Area
From January 1, 1960 Through October 12, 1961

"In the County of San Bernardino, City of San Bernardino."

[fol. 1196] EXHIBIT 7.1 TO STIPULATION OF FACTS
NUMBER ONE

CHEVROLET MOTOR DIVISION
General Motors Corporation
Metropolitan Area Addendum
To Dealer Selling Agreement

The following is expressly declared to be a modification of your Selling Agreement and is hereby approved as such by the General Sales Manager of Chevrolet Motor Division, General Motors Corporation, hereinafter called "Chevrolet":

"Chevrolet has made a survey or an analysis of areas, hereinafter called Metropolitan Areas, which include cities having a population of 50,000 or more or in which two or more Chevrolet dealers have common sales responsibility, and has determined thereupon the maximum number of dealers to be located in each Metropolitan Area and the approximate geographical locations of such dealers. In any Metropolitan Area, however, where Chevrolet shall not have made such a survey or analysis, the maximum number of Chevrolet dealers and their approximate geographical locations and, in addition, the number of established open points shall be the same as those appearing on Chevrolet's records as of March 1, 1956.

"Chevrolet has informed the dealers located within each Metropolitan Area as to the maximum number of dealers to be located therein and their approximate geographical locations, and no changes in respect thereto will be made unless and until a survey, analysis or review of such Metropolitan Area has been made and at least sixty (60) days' notice of such proposed change shall have been given to each Chevrolet dealer located therein so that such dealer may, if it so desires, discuss same with Chevrolet prior to the effective date of such change; provided, however, that such notice may be waived by mutual consent of Chevrolet and all dealers located in such Metropolitan Area; and provided further, that if a Chevrolet dealer located in a Metropolitan Area has been given notice by Chevrolet of the termination of its Selling Agreement in accordance with the provisions thereof, or a dealer has knowledge that termination by

either party will take place, or that termination by expiration without the grant of a further Agreement by Chevrolet will become effective, and at that time such dealer is handling or undertakes to handle another line of motor vehicles, Chevrolet may appoint, or cause to be appointed, a Chevrolet dealer to be located in such Metropolitan Area one month thereafter, even though the appointment of such dealer may raise temporarily the number of Chevrolet dealers in such Metropolitan Area above the said maximum”.

Chevrolet Motor Division, General Motors Corporation,
K. E. Staley, General Sales Manager.

By Zone Manager.

(Dealer should file this Addendum with Dealer’s current
Selling Agreement.)

Detach and Return to Zone Office

City or Town State
Date, 19....

Received from Chevrolet Motor Division—General
Motors Corporation “Metropolitan Area Addendum to
Dealer’s Selling Agreement” the terms of which are ac-
cepted and agreed to.

.....
Witness Dealer

By

[fol. 1197] EXHIBIT 7.2 TO STIPULATION OF FACTS
NUMBER ONE

CHEVROLET MOTOR DIVISION
General Motors Corporation
Metropolitan Area Addendum
To Dealer Selling Agreement

Dated , 19

Dealer Firm Name

Street Address

City and State

Chevrolet has designated as Metropolitan Areas certain Areas which include cities having a population of 50,000 or more or cities in which two or more Chevrolet dealers have common sales and service responsibility.

Based on surveys and analyses made of each Metropolitan Area, Chevrolet has determined the maximum number of dealer points to be located in each Metropolitan Area and the approximate geographical location of each dealer point. By separate written notice Chevrolet has heretofore advised or will advise you and each authorized Chevrolet dealer located in your Metropolitan Area of the geographical area encompassed by such Metropolitan Area, the maximum number of dealer points to be located therein and their approximate geographical locations.

You are advised that no increase in such maximum number of dealer points or in their approximate geographical locations will be made by Chevrolet unless and until a survey, analysis or review thereof is made by Chevrolet and at least sixty (60) days notice of such proposed change is given to each authorized Chevrolet dealer located in your Metropolitan Area so that each such dealer may discuss the proposed change with Chevrolet prior to the effective date thereof, unless each such dealer shall have waived such notice.

However, the undertaking of Chevrolet hereunder to provide the dealers in your Metropolitan Area with sixty (60) days prior notice of any such proposed change shall not

apply in those cases where Chevrolet, pending the termination by either party or termination by expiration of the Chevrolet Dealer Selling Agreement of an existing dealer in your Metropolitan Area, appoints a new dealer for the approximate geographical location of such existing dealer, even though such appointment temporarily increases the maximum number of dealer points in your Metropolitan Area.

This is expressly declared to be a modification of your current Chevrolet Dealer Selling Agreement and is hereby approved as such to the extent that it affects in any way the provisions thereof.

Chevrolet Motor Division, General Motors Corporation,
By K. E. Staley, General Sales Manager.
By Manager.

Acknowledged and accepted this day of
....., 19....:

Dealer Firm Name

By
Title

[fol. 1198] IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 2

July 2, 1960.

Mr. Jere Faust
Assistant Zone Manager
Chevrolet Motor Division
Los Angeles, California

Dear Jere: .

I am certain this letter will come as no great surprise to you as you have probably heard of this before, but thought that we too write; bringing it to your attention. Discount Houses are certainly being very active in this area. There are three to the best of our knowledge, who are in business within the city limits of Santa Ana, a few blocks down the street from our agency.

As you probably already know Discount Houses do not purchase their cars from the local dealer, but the local dealer is obligated to service said purchases. We certainly ask your assistance in stopping their sources of supply of new cars.

According to the last authentic report, one discount house alone was reported to have sold 173 new cars last month. A majority of which were most obviously the more popular car, Chevrolet.

We are doing and will continue to do everything in our power to combat these Discount Houses, and whenever we are on a deal with a person who has contacted them have been successful in most instances in seeking the business; even though there has been little or no gross. However, there are many persons who purchase from Discount Houses which we will never be able to contact. With these people, of course, we have no chance of delivery. We certainly hope you will take active steps before we get into the model clean-up period.

Thanking you in advance.

Very sincerely yours, Marty Lockney, President.

Kimberly 3-9311.

Guaranty Chevrolet.
General Motors, Chevrolet, 120 West First Street, Santa Ana, California.

[fol. 1199] IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 3

From the Desk of . . . (See page 12)

Eddie Hopper

To: Jerry Faust, % Zone Office

Date: October 3rd, 1960.

Please note the enclosed copy of the CMA "News" which has been distributed in Orange County. Already they are advertising 1961 models at a year-end clearance figure. They, along with Gemco, Leonards, and ABC, have us completely (and Fedco) surrounded if you would note on a map. Chevrolet has to make a definite move on this situation before it gets completely out of hand as I cannot sit here trying to hold close to full gross when they are already quoting first week delivery and using cost figures plus \$150.00. We both know they will deliver too! With this union threat going around this situation would only increase their chances of victory with more disgruntled salesmen in our agencies. This is a cancer and must be treated as such. I do believe you agree with me. Any assistance I can offer, including that of my managers and sales force, will be at your disposal in order to remedy these discount thieves. Hope to see you during the opening.

Sincerely, Eddie Hopper.

Compliments of The Reynolds & Reynolds Co., 3044
Riverside Drive, Los Angeles 39, Calif.

[fol. 1200] IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 4

Received October 18, 1960

BOB ERSKINE CHEVROLET

363 East Holt Avenue, Pomona, California

NA 2-1136

October 17, 1960.

R. M. O'Connor
3325 Wilshire Blvd.
Los Angeles 5, Calif.

Dear Mr. O'Connor:

In reply to your letter of September 23 regarding the Policy and Warranty Claim expense of our dealership I can advise that we have just completed an audit of our year to Date L & MRs. I have personally supervised this audit and I am in constant close contact with my Service Manager and his conduct of this important phase of our operation.

Our audit reflects that of the \$18,302 submitted in claims this year \$5167.00 or 28.2% was for work performed on Chevrolets sold by other dealerships. I feel that this may account for our experience. Perhaps the fact that we actively solicit the service business of our local Chevrolet owners who buy their cars from other Chevrolet dealers may account for our unusually high percentage of L & MRs.

I am enclosing a sample of the type letter we mail to new Chevrolet buyers as soon as we get the information from Motor Recorder.

The only Chevrolet owners we exclude are those who obtain their cars through the Union Store Discount House in Upland.

I appreciate your letter, Mr. O'Connor, and I'll certainly welcome your comments and assistance at any time.

Sincerely, Bob Erskine.

BE:jg

cc: R. M. Cash, J. C. Faust.

[fol. 1201] IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 6

Received November 7, 1960

WARREN BIGGS CHEVROLET
205 South Vermont Avenue Telephone DUmkirk 1-1211
Los Angeles 4, California

November 5, 1960.

Mr. Owen Keown,
Lincoln & Washington Boulevard,
Venice, California.

Dear Owen:

Since I was rather shaken up to find myself in the role of a discount house bell cow, I hastened to get together some figures from our October business to dispel this illusion.

Out of 125 cars and trucks reported out on factory ten day reports last month, 26 deliveries stemmed from Fedco referrals. Of these 26 deliveries, 11 were located outside of the City of Los Angeles. Of the 11, 3 were delivered in Orange County. It is interesting to note that 33 of our 125 deliveries were out of the city, indicating that two-thirds of our deliveries outside our own actual area of service influence were delivered by regular retail salesmen. I believe that this would be a higher ratio than usual for us, possibly because of the fact that we have been advertising new 1960's and new 1960 El Caminos. In this connection I would like to point out that the same service problem arises out of our regular salesman retail deliveries outside of the city as do with the Fedco referrals.

I have questioned everyone in my dealership in a management capacity as to any connection we might have with any discount house of which I might be unaware. With the exception of one 1960 El Camino that we delivered through the Fleet Sales Company, only because of the lack of availability of one elsewhere, we delivered no cars or trucks to any discount houses during October. My Fedco salesman delivered only four cars outside of his Fedco referrals and they were all from personal individual bird dogs. You

spoke of a Moore Discount house using our name, and I am informed by our salesmanager that they made overtures to us about a year and a half ago through a salesman named Lawson, who I understand once worked for you. At that time their overtures were declined and none have been made since. I can only assume in the case that you mentioned that some individual salesman in my dealership must have encouraged their sending in a prospect in the hope that he might do something with subject prospect when he arrived. I have also carefully checked back with my office personnel, and I can state positively that no checks have been issued to discount houses.

Let me give you some further interesting detail on the Fedco account. Referrals are sent to us with no prior figures and we are in complete control of the deal in every respect. We sell about 25% of the people referred to us. Last month on 26 new passenger car deliveries we grossed an average of \$272/00 per car, and these figures I have just taken personally from our wash-out sheets. On the 4 trucks that were delivered, an average gross of \$254.00 per unit was retained. In addition to these grosses, an actual realized under-allowance of \$1043.00 on used cars traded in amounted to approximately \$35.00 per unit, paying all but \$15.00 of the referral fee on each car and truck delivered during the month. These figures do not take into account retail grosses realized from the sale of Fedco trade-ins or finance and insurance profits derived. They also do not take into account profits derived from the average retail sale of ten used cars to Fedco referrals each month. It should be obvious to you that the retention of such grosses would not imperil the trading position of any other dealer with these prospects. In fact, we are daily losing business to other dealers at grosses substantially below those indicated above. It would also be obvious to you that we would be most reluctant to discard an account as good as this one without rather concrete assurance that it would not immediately be picked up by another Chevrolet dealer.

A few comments as to the servicing of our Fedco cars. We use on every delivery a three year or 36,000 mile warranty, and we make quite a play of delivering the document to every owner. This warranty necessitates the return of the customer to our place of business every 1,000 mile for lubrication and oil change in order to keep his warranty

active. I would be very glad to run a survey in our service department to confirm my belief that almost 100% of our Fedco deliveries return to us for their new car warranty service.

I would like to emphasize again that this firm does not and will not do any business with a discount house or any other referral agency but Fedco. I would like to further go on record with a statement that, despite our profit position in this account, we would drop it immediately if requested to do so by the Chevrolet Motor Division.

As I told you yesterday, if it is generally conclusive that our termination of the Fedco account will be a decisive step in terminating discount house activity I would be very favorably disposed to so doing.

Your very truly, Warren Biggs.

WB:e

cc: Mr. John Hessel, Hessel Chevrolet, 901 North Sepulveda, El Segundo, California.

cc: Mr. Robt. O'Connor, Chevrolet Zone Office, 3325 Wilshire Boulevard, Los Angeles, California.

[fol. 1204] IN THE UNITED STATES DISTRICT COURT
PLAINTIFF'S EXHIBIT No. 7

Memorandum From L. H. Averill

November 18, 1960.

Mr. J. M. Roche

Attached hereto is copy of letter received by Mr. Staley from Mr. Connell of Miller Chevrolet Co.—together with tearsheet showing Gemco's ad which is appearing in the daily newspapers at Santa Ana and possibly in the "Los Angeles Times".

After this has served its purpose, you may wish to turn this over to Mr. Schreitmuehler who has a rather extensive file on the activities of this discount house.

L. H. Averill.

LHA:rm

Att.

[fol. 1205] MILLER CHEVROLET CO.
1000 West Coast Highway
Newport Beach, California

November 11, 1960

Dear Mr. Staley:

As you probably know I have a 1/3 interest in this deal with a 5 year buy out agreement.

The enclosed ad I am sending is only to appraise you of a nasty situation existing in this area, our county in particular. It was run in the Santa Ana Register Nov. 10th and I understand also in the Los Angeles Times. Both papers have a wide circulation in our area.

This particular discount house has models on display [fol. 1206] that some of us *franchised* dealers have not had as yet.

I think the ad speaks for itself.

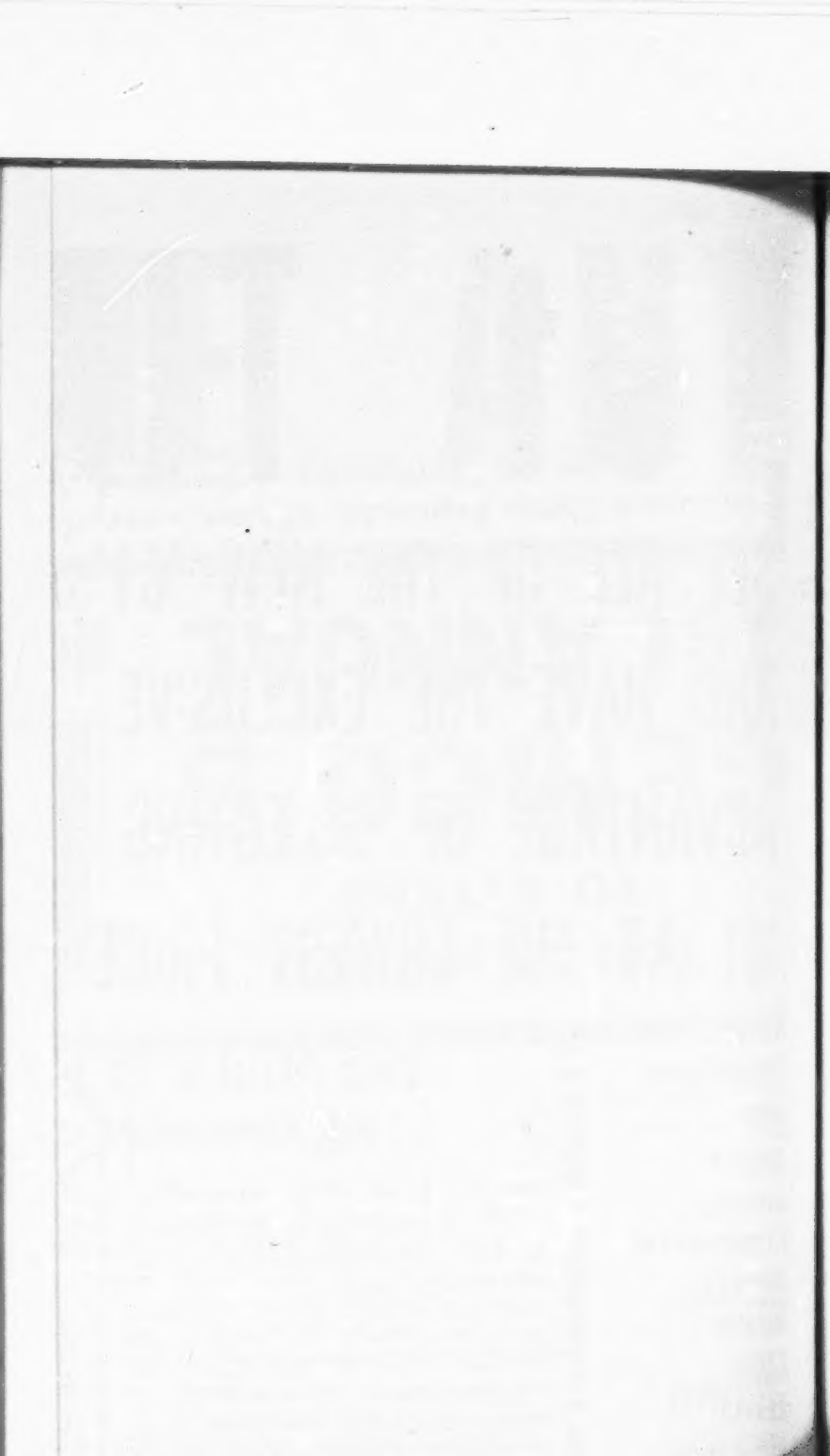
I am sending this to you on a personal basis.

The local dealer group is already working on this thing thru Mr. O'Connor, and no doubt will be brought to your

attention soon, but this is the boldest move on their part to date and came about while the zone people are in Oakland and most of the dealer group is attending a meeting in Honolulu.

With kindest regard to Nell.

Sincerely, John Connell.



[fol. 1208] IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 8

Received November 14, 1960

Mr. O'Connor:

Here is another sample of "Bootleg" Discount House New Car business. This ad appeared in the Los Angeles Times,—Orange County Section.

It also appeared in the Santa Ana Register.

Fred Logan.

[fol. 1210] IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 9

EDDIE HOPPER CHEVROLET
10511 Garden Grove Boulevard
JEfferson 4-2700—HEmlock 2-6411—MAdison 5-2963
Garden Grove, California

11-15-60.

E. N. Cole,
Chevrolet Motor Division,
General Motors Building,
Detroit 2, Mich.

Dear Sir:

I am writing in regard to the Discount House problem on automobiles here in So. California.

I am a Chevrolet Salesman and make my living thereby. I have lost a considerable amount of business because of these places and it seems to be getting more so all the time.

I believe in competition and there is plenty in this business, but competition like this is highly unfair.

There are seven of these so-called Discount Houses in this immediate area. The dealers that are supplying these places with cars exist out of this area. I believe the only way to eliminate this menace is to shut off the Discount Houses supply.

Hoping you will look into this matter, I remain,

Sincerely, Richard P. Zebroski.

[fol. 1211] IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 10

WESTERN UNION

TELEGRAM

W. P. Marshall, President

The filing time shown in the date line on domestic telegrams
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Received November 16, 1960, J. M. Roche

1056P EST NOV 15 60 DEA852 OA684
O SAA429 NL PD LAGUNA BEACH CALIF 15

JOHN F GORDON PRESIDENT GMC
GENERAL MOTORS BLDG DET

FINDING IT EXTREMELY DIFFICULT TO SELL AGAINST DIS-
COUNT HOUSES OUR AREA SEVEN TO BE EXACT OUR CHEV-
ROLETS ARE BEING DISCOUNTED BEYOND REASON SUGGEST
YOU INVESTIGATE AND ADVISE PERSONALLY ITS PLACING MY
JOB IN JEOPARDY

CHEVROLET SALESMAN ERIS H JAMISON JR 350 BROADWAY.

[Copy Illegible]

[fol. 1212] IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 11

EDDIE HOPPER CHEVROLET
10511 Garden Grove Boulevard
JEfferson 4-2700—HEmlock 2-6411—MAdison 5-2963
Garden Grove, California

November 16, 1960.

Mr. E. N. Cole
Chevrolet Motors Division
General Motors Building
Detroit 2, Michigan.

Dear Sir:

I have been a professional automobile salesman for the past fifteen years and during the past two years my income has been seriously affected by sales of cars through Discount Houses. I am a Chevrolet 100-Club Member, hold a Dodge Top-Flite Award, have a Packard Master Salesman ring and a Studebaker Salesman Award. So you can understand my resentment against the fact that neither salesmen or New Car Agencies will be necessary if sales continue through the medium of Discount Houses.

It seems pertinent that something be done from a manufacturing level to correct this situation, through a matter of distribution to dealers who sell new cars to the discount sources.

I will appreciate a reply from you at your earliest convenience.

Thank you.

Sincerely, Richard H. Gingrich.

RHG:bg

[fol. 1213] IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 12

EDDIE HOPPER CHEVROLET
10511 Garden Grove Boulevard
JEfferson 4-2700—HEmlock 2-6411—MAdison 5-2963
Garden Grove, California

November 16, 1960.

Mr. E. N. Cole
Chevrolet Motors Division
General Motors Building
Detroit 2, Michigan.

Dear Mr. Cole:

It is with pleasure and also with regret that I am directing this letter to you on behalf of my Salesforce. My pleasure is that of owning a volume Chevrolet Franchise. My regret is because of a menace we are faced with in Orange County—Discount Houses!

Recently we have been plagued with an increasing number of these so-called volume stores in this area. To be exact, we now have seven (7) of them surrounding my agency, which is located in Garden Grove. To name them, they are: Gemco, Fedco, Fed-Mart, Leonards, ABC, White Front, and C. M. A.

It may not seem comprehensive to someone in Detroit, Chicago, or New York that a discount house could affect the operation of a Chevrolet Dealership, but, believe me, it has. I, and a few other Chevrolet dealers, have spoken to the Los Angeles Zone Office regarding this, and have been told that they are doing as much as possible, and investigating the problem. A group of Chevrolet dealers in the Los Angeles/Orange County area are so concerned that they *joined* together in order to fight this problem. It has grown to such a magnitude that now *all* the dealership, Chevrolet, Ford, Pontiac, Oldsmobile, Dodge, Plymouth, etc., in this area, are striving to save their agencies and Salesforces, as this is a matter that is extremely serious and should be dealt with immediately.

Believe me, I am proud of the fact that I am a Chevrolet

Dealer and have been associated with Chevrolet for the past 30 years. I am also proud of the fact that I have built one of the most modern and most reputable agencies, covering five acres, in Southern California. This is something to be proud of, but, at the same time it is irritating because I must have \$500,000 invested in order to sell Chevrolets while these discount houses have only a desk and a ribbon clerk who acts as a salesman. These leeches are selling new Chevrolets two to three hundred dollars less than I can afford to deliver one. They inform the people to shop the agencies and, "get the best prices you can—then come back and save hundreds". What hurts is that it is true! They are being supplied these new cars by five or six Chevrolet dealers, who are located 18 to 30 miles away from here, for \$50.00 to \$75.00 over invoice.

[fol. 1214] Just as an example, last week-end at Gemco, located in Anaheim, a so-called auto show was presented. There were a minimum of six Chevrolets shown, supplied by Citizens Chevrolet in Eagle Rock. The Federal Price Sticker showed \$3,356.00, and Gemco posted their price—only \$2800.00! These cars are not only being displayed at these stores, but delivered there also. How do you think my Salesforce reacts to something like this? Some of the force have already reacted. Two have quit, both 10-12 car a month men, and went with Rambler in another area. A couple more just quit and got out of the business. I don't blame them!

My General Manager, Sales Manager, and Credit Manager are at their wits end. It is disgusting for them to work a deal for one of their salesmen (of which we have 28) and not be able to close the sale because we cannot even meet the price and the 4½% financing guaranteed by these discount houses. Mr. Cole, this is a serious problem. It can spread nationwide and hurt the fine reputation Chevrolet Dealers, such as I, have taken a lifetime to develop. Someone has to put their thumb on the source right now. Will you give my sales personnel the help that they deserve?

At the same time, please remember that Chevrolet expects us to service these autos that these discount houses sell. This is like pouring salt in a wound. I cannot over-emphasize the seriousness of this problem because the only other way we can go is to join them, instead of fighting

them. This would ruin many a small dealer as you know, plus lower Chevrolet's continual higher Resale value. Our Chevrolets should not be put in the same category as washing machines, refrigerators and the like.

If you want further proof of these operations, such as pictures, testimonials, signed orders, etc., we will be more than happy to supply them. In the meantime, we will appreciate your personal attention to this matter so we may keep our present salesforce, which is doing a wonderful job even under these pressing conditions.

I wish to thank you in advance for your usual consideration and cooperation.

Respectfully yours, E. N. Hopper, President, Eddie
Hopper Chevrolet.

H/wly

[fol. 1215] IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 13

EDDIE HOPPER CHEVROLET
10511 Garden Grove Boulevard
700—HEmlock 2-6411—MAdison 5-2963
Garden Grove, California

November 16, 1960.

Chevrolet Motor Division
General Motors Corporation
General Motors Building
Detroit 2, Michigan

Attention: E. N. Cole

Dear Mr. Cole:

I as a member of the sales force of Eddie Hopper Chevrolet feel it is imperative to call to your attention a very alarming problem that faces my future as a salesman to the aforementioned.

I moved to California in April 1960 from Detroit, Michigan where I was employed with Hanley Dawson Chevrolet, previous to that I was a Used Car Dealer in Detroit and Florida for seven years, prior to becoming a dealer I was a salesman (new cars) and previous to that an accountant. My record as a salesman and a dealer has always been above average. I feel I am what is known in the automobile business as a career salesman. Since moving to California I purchased my home in Garden Grove so it will be with great reluctance if it becomes necessary to move to a less competitive area.

The problem I mentioned in the first paragraph is Discount Houses. Being a Detroitter and regulated by the laws of the State of Michigan it probably is difficult for you to believe a State the size of California has the law set up so a "Bootlegger" such as these Department Store Discount Houses are allowed to operate in direct competition to legally licensed Franchised New Car Dealers. A new automobile is sold by a "Order Taker" as you would purchase a new suit of clothes or an ordinary kitchen appliance, at prices retail that would only cover a career salesmans

commission plus service fee allowing no room for a Franchised dealer to cover his burden or so called overhead. The interest rate that is being charged to customers is equal to the rate G.M.A.C. charges Mr. Hopper. My own next door neighbor purchased a automobile from a discount House.

I believe Chevrolet Motor Division has no intention of allowing this dangerous situation to continue. I as a member of the sales force of Eddie Hopper Chevrolet am very proud of the beautiful Aluminum, Glass & Brick Monster Mr. Hopper has created and hope you personally take the bull by the horns and settle this situation at your earliest convenience.

Yours very truly, Howard T. Lane.

[fol. 1216] IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 14

WESTERN UNION

TELEGRAM

W. P. Marshall, President

The filing time shown in the date line on domestic telegrams is Standard Time at point of origin. Time of receipt is Standard Time at point of destination

Received November 16, 1960, J. M. Roche

123P EST NOV 16 60 DEA188 OB252
O SAA07% RX PD LAGUNA BEACH CALIF 16 930A PST

MR GORDON, PRES GENL MTRS CORP
GENL MTR BLDG DET

THE PRECEDENT SET BY DEALERSHIP AND SALESMAN WITH REPEAT SALES TT OUR CUSTOMERS AND THE HANDLING OF THEIR SERVICE PROBLEMS, HAS BECOME GREATLY IMPAIRED BY DISCOUNT HOUSES THAT HAVE XOVED INTO OUR COUNTY. THESE PEOPLE ARE SELLING 1960 CHEVROLETS A LITTLE OVER THE COST OF A CHEVROLET TO AN AUTHORIZED DEALER IF THIS PRACTICE IS NOT STOPPED AT ONCE IT WILL CAUSE ME AS A SALESMAN TO SEEK EMPLOYMENT IN ANOTHER FIELD OTHER THAN AUTOMOBILE SALES. I CANNOT NTR CAN ANY OTHER SALESMAN CONTINUE TO SELL AGAINST SUCH UNFAIR COMPETITION AS THIS. THESE PEOPLE ARE BEING SUPPLIED WITH CARS FROM THE LARGE VOLUME DEALERS IN THE METROPOLITAN AREAS. THE SUCCESS OF THE GENERAL MOTORS CORPORATION WAS NOT BUILT ON SALES FROM DISCOUNT HOUSES BUT IN AUTHORIZED CHEVROLET DEALERS AND THEIR [fol. 1217] SALESMAN

JACK TRESCOTT 11 8 LASENDA PLACE

[fol. 1218] IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 15

WESTERN UNION

TELEGRAM

W. P. Marshall, President

The filing time shown in the date line on domestic telegrams is Local Time at point of origin. Time of receipt is Local Time at point of destination

110A EST NOV 16 60 DEB043 OA041
O SAA528 NL PD TDSA ORANGE CALIF 15

JACK GORDON GENERAL MOTORS CORP
DET

WE THE UNDERSIGNED SALESMEN OF SELMAN CHEVROLET ORANGE CALIF WISH TO REGISTER A PROTEST AGAINST THE PRACTICE OF RETAILING NEW AUTOMOBILES THROUGH DISCOUNT HOUSES THIS PRACTICE IS WIDE SPREAD IN ORANGE COUNTY AND IS DETRIMENTAL TO US INDIVIDUALLY AS PROFESSIONAL SALESMEN PARALIZING TO THE LOCAL DEALERS AND IN THE LONG RUN NOT IN THE BEST INTEREST OF EITHER THE CUSTOMER OR GENERAL MOTORS

HOWARD GOODWIN, IRA ARMSTRONG, RALPH CARNES, ROSS BENSON, PAUL SEMS, FLOYD CARRIKER, CLINT GOFORTH, GEO LANE, GLEN RILEY, CHAS MULVEY, JAMES ELLIS, PALMER HINES.

[fol. 1219] IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 16

DETROIT

I HAVE DISCUSSED OUR PHONE CONVERSATION WITH MESSRS CASH AND O'CONNOR. MR O'CONNOR WILL PERSONALLY MEET WITH DLR AND SALESMEN OF SELMAN CHEV ORANGE, CALIF. TOMORROW COMPLETE REPORT, AS YOU REQUESTED, WILL BE SENT YOU MONDAY
BEST REGARDS

F M THOMPSON CHEV

